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THE

EDINBURGH REVIEW

OR

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FOR

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THE

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THE proceedings of both Houses of Parliament above referred to, show that persons who conceived themselves injured by false evidence, given against them behind their backs, to Committees of either House, brought actions for the purpose of vindicating their character from the slander; and that each House, on being informed, by petition of the party sued, that such action had been brought, sent for the Plaintiff and his Attorney, and, by direct menaces, compelled them to stay their actions, and so far submit to the imputations which the evidence had

brought upon them. This was said to be done in exercise of Privilege of Parliament.

The fact cannot fail to awaken the most serious reflections in all constitutional minds. To interpose the authority of either House between any one of the Queen's subjects, and the remedy which the law may give him against another for an invasion of his personal rights, would appear to be a most questionable practice; yet the step was taken by the House of Commons almost as a matter of course; in a thin house, towards the close of a session, with scarcely the form of a debate, and without any division. This vote of the Commons became a precedent for a similar vote, on a similar occasion, in the Lords. The greatest judicial body in the empire was strongly warned against the proceeding; they did not adopt it till a Committee had examined and reported on the precedents connected with the subject. Their report will be noticed hereafter. The cause of alarm is greater from the powerful opposition offered to the vote by Lord Brougham, whose Speech is before us. We much regret that the arguments by which he was answered, have not been also published with the authority of those who advanced them.

His Lordship's Protest does not allude to any formidable resistance by argument from the supporters of the vote; and we think that he is likely not to have passed over in silence any strong point in the pleading of his adversaries. We have some reason to think that many of those who had concurred in the resolution, were of opinion, too late, that they had done wrong; not only in proceeding so hastily in a matter so important, but in arriving at the conclusion which was adopted. At all events, we are satisfied that public opinion must be directed by this valuable document to the imminent and extreme danger to which important rights and interests stand exposed.

For the truth can no longer be veiled from sight by mysterious generalities; we are distinctly warned—should we not rather say threatened? Members of Parliament, in both its Chambers, high in office and eminent in station, conspicuous for talent, distinguished in those professions which exercise most influence over the community—men differing in all political opinions, and connected with every party—have for the first time united their voices in maintaining this proposition,—That Englishmen are hereafter to enjoy their liberties, their properties, and their reputation, not according to the rules of any known law, but at the mere will and pleasure of a majority in either House of Parliament.

This proposition was certainly deducible as an inevitable corollary from the assertion of Privilege formerly put forth; since he who claims the right of sole judgment on the extent of his own

privileges, and to declare them without appeal in each particular juncture, virtually claims authority to silence all tribunals and supersede all law. But this was reasoning and inference. The most apprehensive little expected to hear the principle boldly avowed, and to behold it in active operation.

Let us suppose a possible case under circumstances of daily occurrence. A new law has passed; adverse interests were to be reconciled, and were protected by its various clauses,—reluctantly submitted to, by reason of the opposing influences. Without mutual sacrifices, the bill must have been thrown out. The battle was obstinately fought, but has been lost; or rather the law is the fruit of negotiation and compromise. The law has settled the question. But what if, afterwards, either of the extinguished interests should be patronised by Privilege? What if either House should resolve that the subject-matter was of its own exclusive cognisance? That the construction of acts relating to it, or of all such clauses, or of all railway acts, belonged solely to its jurisdiction? That if any suitor proceeded to enforce the right given him by the law, he and his counsel and attorneys should be sent to prison? That the judges, who in the execution of their duty dared to decide on the point, should share their fate?

The advocates of Privilege will condemn the very supposition as monstrous. They admit that such a course would be wrong, and for that reason could not be taken. *This* is not what they wished or intended, nor any thing at all resembling this. They only wished, modest and considerate as they are, to set up an arbitrary, unlimited, uncontrollable power. Hear what was said by one of these grave judicial organs, whose encouraging and reiterated *dicta* were the food on which these swelling pretensions fed. In the reign of Queen Anne, Mr Justice Powys, differing from the Chief-Justice, as his other two brethren also did, thus deals with one of the objections to the warrant issued by the House of Commons for the imprisonment of John Paty. 'The 'second objection is, that if this court cannot judge of the com-'mitments of the House of Commons, and such a commitment is 'good, they may stop the whole course of law, and take upon them 'a despotic power. But this is a very foreign supposition, and ought 'not to be said by any Englishman. The House of Commons 'are a great branch of the constitution, and are chose by our-'selves, and are our trustees; and it cannot be supposed, nor 'ought to be presumed, that they will *exceed their bounds, or do* '*any thing amiss.*' And such language has been employed during the late controversy: Do not be so uncharitable as to fancy that we shall abuse an arbitrary power: we want nothing but the use of it.

We do not propose to discuss the question whether arbitrary power can be safely trusted to a popular assembly, subject to so many influences from within and from without. But we propose briefly to meet the argument by the fact—the argument that no danger of abuse needs be feared, by the fact that it has frequently occurred. For this purpose we shall exhibit a list of cases, in which the English House of Commons,* acting on a claim of Privilege, sometimes allowed by law and public opinion, and sometimes condemned, has grossly perverted the privilege, as claimed by themselves:—a set of precedents to be eschewed: a bead-roll of decisions which no honest or rational men could uphold: a series of facts disgraceful to our country, in which the people's own trustees, chosen by themselves, *have* assumed a despotic power; and, against the presumption above prescribed by the reverend Judge, *have* exceeded their bounds, *have* done *every* thing amiss, *have* trampled deliberately upon the first principles of justice. We speak of times anterior to August 1841, when the present Parliament was called into existence.

Thorpe's case was in the reign of Edward IV., in which Parliament *consulted the judges* on the course they ought to take upon the arrest of their own Speaker; but the judges, with many professions of the most profound respect, declared that that great assembly was the best and sole judge of its own privileges. That case may be safely left to the commentaries of Lord Holt, and to the following description of the Parliaments of that time, as given by Lord Brougham, in his *Political Philosophy*.

'The conduct of the Parliament, both Lords and Commons, in the times of which we have been treating, was as bad as possible in all particulars save what related to their own privileges. The nation can never be sufficiently grateful for the steadiness with which they then persisted in establishing their legislative rights, and their title to interfere in the administration of public affairs. But their whole conduct towards individuals and parties, the use they made of their power, was almost always profligate and unjust in the greatest possible degree. During all Richard II.'s

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* This observation is confined to England. In Ireland, it is well known that the House of Commons, in the 18th century, came to a vote that any clergyman claiming agistment tithe was a traitor and enemy to his country, and to the Protestant interest. They acted on this vote; and clergymen were severely punished for claiming a property as indisputably their own, as the land that may have been vested in a railway company, by an act which received the royal assent last August, belongs to that company; or the patrimonial estates of peers and members of Parliament, to their hereditary owners.

reign, all Henry VI.'s, all Edward IV.'s and Richard III.'s, up to the accession of Henry VII., they blindly followed the dictates of the faction which had the upper hand—the prince whose success in the field had defeated his competitors, the powerful chief whose authority prevailed at the moment. The history of their proceedings is a succession of contrary decisions on the same question, conflicting laws on the same title, attainders and reversals, consigning one day all the adherents of one party to confiscation and the scaffold, reinstating them the next, and placing their adversaries in the same cruel predicament. Thus, in 1461, on Edward IV.'s victory, they unanimously attainted Henry VI., and all his adherents, including 138 knights, priests, and esquires, as well as princes and peers, and declared all the Lancastrian princes usurpers. A few years after, both Edward IV. and Henry VI. were actually prisoners at one and the same time. The next year Edward, who had not regained his freedom and his crown for many months, was fain to fly the realm, when all his adherents were attainted without exception. Richard III., notwithstanding the unusual horror excited by his manifold crimes, after a few months wearing the crown, which he had been offered by many of the Lords and some citizens and gentlemen, but by neither house of the legislature, found it quite safe to assemble a Parliament, which at once recognised his incurable title, and attainted all his adversaries. When the Earl of Richmond defeated and killed him at Bosworth, and took the crown offered him by the soldiers on the field of battle, the Parliament immediately reversed all the attainders of the Lancastrians, and declared the princes of that house to have been lawfully seized of the crown. Nay, the Commons settled tonnage and poundage on him for life. They however added as a kind of condition, in which the Lords concurred, and to which he assented, that he should strengthen his confessedly bad title to the crown by marrying Elizabeth, the representative of the York family. At the same time, partly as a means of finance, somewhat inconsistently with their opinion of the York title, they attainted, that is, confiscated, thirty of the York party, on the unreasonable and indeed unintelligible ground of having been in rebellion against Henry when he was only a private gentleman, Earl of Richmond. But it is to be observed that the statute limiting the crown to Henry and the heirs of his body, was made by the assent of the Lords at the request of the Commons.'—(Vol. iii. p. 248.)

From these unsettled times let us pass to the 17th century. Edward Floyd, in 1621, a justice of peace, and a gentleman of good estate in Salop, was impeached, before the Commons, for uttering uncivil speeches towards the Prince and Princess Palatine, the son-in-law and daughter of King James I. His crime consisted in saying—'I have heard that Prague is taken, and 'Goodman Palsgrave and Goodwife Palsgrave have taken to 'their heels and ran away; and, as I have heard, Goodwife Pals-'grave is taken prisoner;' and that these words were spoken 'in 'a most despiteful and scornful manner, with a sneering and 'scoffing countenance, and with a purpose to disgrace, as much

'as in him lay, these two princes;' and the like at other times. Claiming the privilege of punishing by pillory and fine, on what they called impeachment, that is, an impeachment by themselves as accusers before themselves as judges, the Commons passed a sentence, calculated to efface all memory of those misdeeds of the Star-Chamber and High Commission Court, which soon after brought about the Civil Wars. Their resolution was, that Floyd's body should be scourged, tortured, mutilated, his feelings insulted, and his estate burdened with a fine of £1000.

That the affair, between judgment and execution, was wrested out of the hands of the House of Commons, and subsequently disposed of by the Lords, who maintained with some heat that this sentence was a deep infringement of their privileges, only aggravates the enormity. The Commons humbly deferred to this claim: the sole judges of their own privileges confessed that they had volunteered the exercise of a power which they did not possess. They however entreated their Lordships, that so heinous an offence might not escape condign punishment; and the Upper House, profiting by the example of the Lower,—catching the infection of their Protestant zeal and loyal indignation, pronounced a still severer sentence. Their Lordships, to the pillory and exposure, added a whipping at the cart's-tail. Some scrupulous peers, a small minority, would have excused him the whipping, because Floyd was a gentleman: none appear to have thought this circumstance any objection to nailing his ears to the pillory, or parading him through London and Westminster on horseback, with a placard on his back, with his face towards the beast's tail. Their Lordships multiplied the fine fivefold, declared him infamous and incompetent to be a witness, and directed him to be imprisoned for the term of his life. He was not, however, in fact whipped, though in all other particulars the sentence was rigidly enforced.

When, in the course of some great constitutional contest, abhorrence of the judicial misconduct of Jefferies and Scroggs had been coupled with the wish that their very names might be blotted out from the memory of man, Erskine exclaimed,—'No! let 'them be held in everlasting remembrance! let them be handed 'down with shame and execration to the end of time!'—So let this hideous story of the sufferings of Edward Floyd be studied as an awful and practical lesson! A lesson to the community, showing every individual to what he may be exposed by the claims of arbitrary power;—a still more affecting lesson to the humane, the just, the enlightened, of the excesses of guilt and infamy into which they may be plunged by asserting such a claim. For here was no unwatched drunken rabble, no sudden impulse

of excited savages: we have the recorded deliberation and the public conduct of the knights, citizens, and burgesses; and finally of the brave peers of England, the most cultivated part of a highly civilized nation—the statesmen, the lawyers, the land-owners and merchants—the peers and prelates of a country long renowned in arts and arms, the contemporary admirers of Shakspeare and Bacon, the patrons of Milton and Waller;—all the leading men in a wealthy and powerful country, which even then boasted that it had enjoyed for hundreds of years the inestimable blessings of law and liberty.

The reign of Charles I. gives cause for much reflection on the subject of Privilege. The Long Parliament met in 1640, and passed many valuable laws. The abolition of the Star-Chamber and High Commission Court, and of the right of the Privy Council to try criminal matters, is enumerated by Lord Brougham among the 'great and glorious achievements of this renowned body.'* But he censures all their subsequent proceedings, as 'framed, and possibly intended, to alter the form of 'government.' Nor can any man deny that some of their claims of Privilege were absurd—as the vote that Archbishop Laud's church ceremonies were a breach of the privileges of the House of Commons;—some treasonable—as the votes to levy an army against the King—if the constitution was considered as resting on its lawful basis.† The defence of the Long Parliament is, that the King's violations of the law had thrown the constitution off its bias, and proved his determination to rule independent of all its checks and controls. If they were justified in *foro conscientiæ* for their resistance to this overstrained usurpation, under the name of prerogative, by opposing to it the only power they possessed—or rather by setting up a power never used before, and investing it with the venerable and well-known name of Privilege—their proceedings with that object can furnish no argument for the extent of power which the laws and constitution will recognise in peaceful times.

Walpole speaks with rapturous admiration of Quin's answer to the question, 'By what law could they execute the King?'—'By all the law that he had left them.' The law of necessity, which supersedes all other; the law of self-defence, of which, however applied, the unjust aggressor has no right to complain.

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* *Pol. Phil.* Vol. iii. p. 276.

† The Long Parliament had become executive as well as legislative, when it performed some of its boldest operations,—such as condemning Paul Best to death for denying the Trinity. He was executed by virtue of an *ordinance* in 1646, not under a vote for breach of privilege.

In the commencement of those troubles, if the Commons could avert arbitrary power by no other means than the pretence of Privilege—if that weapon, *non hos quæsitum munus in usus*, was the only one they had the power to grasp—Pym and Hampden might be bound to wield it, however repugnant to the elemental constitution of a mixed government acting upon known laws; yet the shades of these great men have been preposterously invoked, as giving a sanction to interference with the administration of the laws, in the days of King William IV. and Queen Victoria.

Rulers and subjects may draw lessons of public morality and expediency from these tumultuous periods; but they furnish no precedents that can be applied when the empire of the law is re-established. The establishment of that empire, secured by the independence of the judges, is perhaps the most legitimate object of those struggles, and the prize not too dearly bought by all the horrors that accompanied them. They had hardly ceased during the reign of Charles II., or, if it might be truly said that the storm had subsided,

> ——— 'if the terror of the times was past,
> There still remain'd the scatterings of the blast.'

The unsettled opinions of men, and the violent contention of parties, often shook the tranquillity of the state. Could any thing prove it more strongly, than that the House of Commons elected in 1679 proceeded, almost immediately on their meeting, to punish their fellow-subjects who had exercised their undoubted right of petitioning the Crown on the exercise of an important and equally unquestioned prerogative, that of summoning a Parliament? Such petitions were visited as a breach of the privileges of that House of Commons, which had no existence when they were preferred. That 'our trustees, elected by ourselves, of whom no Englishman ought to say that it is possible 'for them to exercise a despotic power, or do any thing amiss,' should vote a petition to the Crown on public affairs a breach of privilege, appears like an incredible fable. Numerous, however, were the victims who could attest its truth. The sergeant-at-arms seized them by the hundred, and detained them till they paid money for their liberation. The people's representatives lodged their constituents in jail, in the name of Privilege, for daring to express their opinion on the conduct of a former Parliament. The grand-jury of Devon were thus dealt with by the House of Commons in which a Whig majority bore sway.

In 1701, the same drama was acted, but with the characters reversed. The grand-jury of Kent ventured to approach the House of Commons with a strong remonstrance against the

Tory government of Queen Anne, for deserting the policy of King William and his Whig ministers. For presenting this petition, Mr Colepeper was imprisoned till the end of the session! What must be said of these proceedings? Were they altogether an abuse? Did the House at those different periods assume a privilege which they did not possess—a privilege inconsistent with their primary duty,—that of redressing the grievances of the people, which can be known by no other means so well as by their petition? Or did they but abuse the privilege of committing for contempt as a punishment for libels?

Of the inquisitorial functions of the House of Commons we hear much, and all Englishmen hear it with pride and satisfaction. These functions have been so exercised as to produce examples of signal benefit to the country: their existence is no mean security against flagrant misgovernment. Information must often have proceeded from polluted sources; but the House were not answerable for its truth, or the respectability of witnesses: they were bound to receive all that was offered, and to seek for all that could be obtained. They might, indeed, have reasonably paused before they adopted for any purpose whatever the depositions of professed spies and double traitors; and when Dangerfield accused James II., then Duke of York, of compassing the murder of his brother, he seemed to warn them against too readily believing a charge so atrocious. They would have properly stored up the statement, which, however incredible, might have derived confirmation from the developments of time, from other facts, from witnesses less infamous. Here was good ground for vigilance and precaution—a good foundation for further enquiries. This was the USE of Privilege.

But the Commons were not satisfied with securing the custody of these secret denunciations. They printed, published, sold them for money, sanctioned by the signature of their Speaker. No doubt, the price was moderate; and a handsome discount allowed the Trade to make large purchases of this foulest of all libels. And in what manner was the revenue thus raised to be employed? The profits of the sale were given to the slanderer!—a premium on secret falsehood, a temptation to other unprincipled men, a prejudice to the fairness of that trial which would have ensued if they had dared to test the truth of the evidence by an open impeachment.

The attorney-general afterwards prosecuted Sir William Williams, the Speaker, who, by order of the House, had published Dangerfield's information. He was convicted, and fined L.10,000, (of which he is said to have paid L.8000,)—his plea of parliamentary privilege being overruled by the court. The Earl of Peterborough, calumniated in the same document, brought

his action for libel against the Speaker, who did not attempt to set up the claim of Privilege in this civil action, but suffered judgment by default, and had to pay considerable damages. And these judgments were not reversed or questioned in any court of error; nor so, as many others were, condemned by the Parliament of King William.

No argument is required to prove that this series of proceedings was an outrageous ABUSE of one of the most valuable privileges entrusted by the constitution to the House of Commons.

Interference with the course of justice was not reserved for the year 1845. It occurred one hundred and seventy years before, and exhibited some most singular features. The Commons, in an appeal case between Shirley and Fagg, and in two or three other cases then pending, asserted a privilege which they had claimed before, but have not always maintained. They resolved that the Lords had no right to decide appeals from courts of equity, where members of the Lower House were parties. Afterwards, they threw down this too invidious distinction; and declared that the Lords had no such right when any commoner was a party. They followed up their solemn resolution with one of the gravest import and most practical character, menacing the legal agents of parties prosecuting such appeals with their highest displeasure:—'Whoever shall solicit, plead, or prosecute any such appeal against 'any commoner, shall be proceeded against as a betrayer of the 'rights and liberties of the people of England.' One of the best speeches ever delivered in the House of Lords, was made by the first Earl of Shaftesbury in support of the judicature of the Lords, and against the interference of the Commons.* The Lords† had formerly taken notice of the imprisonment of the four counsellors, and resolved it to be 'an unexampled usurpation and breach 'of privilege against the House of Peers—a transcendent in-'vasion on the right and liberty of the subject, and against '*Magna Charta*, the Petition of Right, and many other laws, 'which have provided that no freeman shall be imprisoned, or 'otherwise restrained of his liberty, but by due process of law.'

The Commons acted up to their recorded resolution, and sent four counsellors to prison for discharging their professional duty. These gentlemen sued out their *habeas corpus*, but were remanded by an obsequious court of law. They questioned the legality of this remand by a writ of error, which must have come on for decision in the House of Lords. To avoid the embarrassment and

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* See *Cobbett's Parliamentary History*, Vol. iv. p. 791.

† *Journal*, June 3, 1675.

scandal of the collision, the Crown was driven to postpone all public business, and prorogue the Parliament, as a lesser evil. The very same series of proceedings was repeated, in the same order, in the following session. Some of our readers will probably first become acquainted with them from this narrative, and will of course be prepared to hear that a privilege deemed of such immense importance was effectually vindicated—that no such appeal was ever afterwards discussed at the bar of the House of Lords—at least, that the practice was not permitted to prevail without negotiation and conference, and some well-devised precautions of legislative wisdom. Hide, blushing glory, hide the humiliating result! The House of Commons, those exclusive judges of their own privileges, which they hold but for the benefit of the whole people, surrendered this privilege without another blow. They have tacitly acquiesced in this claim of the Lords—nay, more, they have been daily, from that hour to the present, incurring the guilt of betraying the rights and liberties of the people of England. Not a session has passed away in which members have not been parties prosecuting such appeals in their own case, or maintaining as advocates the cause of their clients.

Some will doubt whether it ever can be right to interpose Privilege between the advocate and client: there are some occasions on which it is manifestly indefensible. Suppose the Crown to possess such a power, what would be thought of its being exercised in a criminal prosecution? Conceive the Attorney-General, or the Lord Advocate, putting an individual on his defence against charges involving life or liberty, and then threatening him with summary vengeance if he should presume to obtain the aid of Counsel! Conceive a general notice to all practitioners of the law, that such as dared to appear in behalf of one accused, or to advise him on the means of establishing his innocence, should expiate their audacity in a jail! It would not be a whit more extravagant to utter the same threat against the party himself, who might possibly be much better qualified to defeat the prosecution; and thus accusation and conviction would be identical, and every man would be bound to submit to judgment against himself.

When the Earl of Danby, in 1679, was impeached by the Commons before the Lords for High Crimes and Misdemeanours, he sought to avail himself of the King's pardon for protection against the charge. Doubts were raised as to its legal effect. He wished the point to be argued by his Counsel; and some of the foremost barristers, men destined to fill at later periods the chief seat in our first common-law court, were engaged for the defence of this distinguished culprit. They saw notices

stuck up on the walls of Westminster Hall, that all who ventured to appear in his behalf would incur the displeasure of the House. The Earl (May 10) informed the House of Lords, that he had 'expected to meet his counsel assigned 'by their Lordships for the defence of his plea; but he had 'received a message from every one of them, that they dare not 'appear to argue, by reason of a vote of the House of Com-'mons, *whereby the petitioner is destitute of all counsel.*' Some may regret that such men as Holt and Raymond submitted to this injunction. We think it probable that Erskine would have resisted; and can form some idea of the use to which he would have turned this very topic, from his noble defence of Stockdale; when, not condemned by a vote, but prosecuted before a judge and jury, by order of the House of Commons, for a libel on that assembly.

We ought not, however, hastily to suppose that the Earl of Danby's counsel were deterred by fear from the performance of their duty. Possibly they felt a natural repugnance to the possibility of producing an unseemly collision between the two most venerable authorities in the state. The Lords ordered their attendance. The Commons insisted on their absence: the Sergeant-at-arms might have held them in custody for violating the inhibition; the Black-rod for disregarding the summons; or the last-named officer might have been directed to rescue them from the hands of the formidable Topham. Acquiescence would have been impossible on either side, and resistance might have ended in bloodshed.

Possibly these eminent lawyers thought that they best consulted their client's safety by yielding to an order so unjust and ungenerous. The advocate of a client prosecuted by unscrupulous power, may fairly speculate on producing a reaction in his favour, by giving that power its uncontrolled career. The enforced silence of counsel must have inclined any judges all the more to believe that the point raised ought to save the destitute petitioner.

But Privilege was here called into full operation—the privilege of doing injustice, of condemning unheard, of deciding without discussion, of putting learned men to silence, lest their arguments should wrest a victim from the hands of persecution!

We reach the era of the Revolution, one of the most glorious events in the history of human affairs. Never had such great benefits been purchased at so little cost, or a vast change wrought with so little ground for cavil or complaint. The Parliament did well in asserting its great and undoubted rights, and in reversing the unjust attainders of the preceding reigns. Perhaps

the House of Commons would have done well to proceed against some at least of the judicial delinquents by the known constitutional method of impeachment. They preferred the resort to Privilege. They committed to Newgate two ex-judges for no criminal or unlawful act, but for the faithful discharge of their duty. Both had been turned out of the judgment-seat by Charles II. because they refused to bend the law to his tyranny; but they had been guilty of pronouncing a judgment in strict accordance with the law, ten years before, against Topham, the Sergeant-at-arms. No corruption or partiality imputed—their decision fully justified by clear legal reasoning—and even so explained by themselves as not to draw into doubt any privilege claimed by the House of Commons—their error, if error they had committed, atoned by expressions of sorrow only too humble: they were iniquitously detained in prison till the session ended. The proceeding is a dark stain on the character of that House of Commons.

The Privilege of the House of Commons to determine the right of their own members to contested seats in that assembly on petition, was perhaps the most undeniable of any. The jurisdiction involved an important trust, a public duty of cogent obligation. What severe penalties might have fallen on the libeller, who had dared to doubt the purity of their decisions! Yet there is strong proof, from competent authority—we might say from internal evidence—that in process of time every exercise of that right had become an abuse. Without the least regard to the legal merits of the case, every member who belonged to the prevailing party in politics was sure of success. As in the time of the civil wars of York and Lancaster, 'they blindly followed the dic-' tates of the faction which had the upper hand.' Particular cases of iniquity and inconsistency might be edifying, but we are contented with the general fact. Mr George Grenville told Mr Knox, under-secretary of state—when incapable of serving the public in an official capacity—of his intention 'to endeavour to ' give some check to the abominable prostitution of the House of ' Commons in elections, in voting for whoever has the support of ' the minister, which must end in the ruin of public liberty.' So gigantic was the evil overthrown by the Grenville Act, that that measure is styled by Mr Hatsell one of the noblest works for the honour of the House of Commons, and the security of the constitution, that was ever devised by any statesman or minister. The remedy was to take all these questions out of the jurisdiction of Privilege, and refer them to a tribunal erected by statute. Has it been wholly successful? Let those answer who remember the system of nominees appointed by the respective parties, and, though sworn as judges, scarcely ever known to vote against

those who proposed them. Let those answer who remember the eagerness displayed on both sides to obtain a *good* Committee,—that is, one consisting exclusively, if possible, of one political party, and how rarely such speculations were deceived. Let those answer who, from time to time, have been laudably engaged in framing new securities for an impartial decision, by a series of new statutory enactments. On one great occasion the Grenville Act itself was repealed by a special vote of the House, which gave back to Privilege what ought to have fallen within the province of Law. They took upon themselves to decide on the merits of Mr Fox's election for Westminster, and gave one more example of their readiness to abuse their power, in deference to the Prime Minister.

That now abandoned privilege was clung to with fondness. The party in power was unwilling to throw up the advantage derived from their majority. And, not satisfied with securing the seat of their adherent by their vote, they strove to make the same vote protect the returning officer from the legal consequences of a partial judgment, by which the electors in the losing interest were disfranchised. This led to the great case of Ashby and White. A person in a very humble condition—a cobbler, as he was reproachfully reminded—tendered his vote at the election of members of Parliament for the borough of Aylesbury, and was rejected by the returning officer. The losing candidate petitioned the House of Commons, which declared that his vote was inadmissible. The elector, however, being advised that his vote was notwithstanding perfectly good, brought his action for the rejection of his vote. Lord Chief-Justice Holt thought the action maintainable, while his three brethren held the contrary opinion—grounded on the notion that this was a question of Privilege which the House of Commons alone had power to decide. And it is certain that the House alone had power to decide who should occupy the seat, and, with a view to that result, whether the plaintiff had the right of voting. But the plaintiff contended that he had suffered wrong by the returning officer's rejection of his vote; and for this wrong the House of Commons never pretended that they could give him redress. An incongruity would indeed have appeared between the decision of the House of Commons and that of the Court of Queen's Bench; but this is no more than the conflict that frequently happens between two courts of law deciding any matter incidentally. It constantly occurred between two decisions of the House itself, when the same point arose in favour of the Minister's friend, and against him.

The majority in the House of Commons, however, passed a resolution to the same effect as the judgment of the majority of the Court; they did not in the first instance threaten the plain-

tiff with their displeasure, and he brought his writ of error on that judgment. The House of Lords, after consulting all the judges, decided in favour of the Chief-Justice's opinion, and reversed the judgment of the majority of the Court; and another rejected elector, possessing the same right of voting, fortified by this, the highest legal authority, brought his action also against the returning officer for the same grievance.

Now Privilege took the field. The House of Commons sent him and several others to Newgate for this exercise of a clearly legal right. He sued out his *habeas corpus*, but was remanded to prison by the same majority of the Court which had denied that legal right. He sued out a writ of error on this judgment of remand. What, then, was the resource of the chosen trustees of the people, *quos magnum aliquid dubiâ pro libertate decebat;*—those who had been pronounced but a few days before, by judicial authority, incapable of exceeding their bounds, or doing any thing amiss? They actually stooped to present a humble address to the Crown, praying that this writ of error might be withheld, and the subject deprived of the benefit of a legal judgment on his right to personal freedom, secured by so many statutes, which had made the *habeas corpus*, as was vainly hoped, the all-sufficient bulwark of that inestimable blessing.

All the twelve judges being consulted, were of opinion that the writ of error lay in such a case; and ten of them (two others not differing, but only doubting) were clearly of opinion that it was grantable *ex debito justitiæ*, and COULD not be withheld;—a doctrine, by the way, without which the *habeas corpus* would be a word without meaning. Thus baffled, the House of Commons, with a pertinacity worthy of a better cause, had recourse to Privilege. They condemned Paty and others, and voted that the four counsel and two attorneys named in their several resolutions, 'in pleading upon the return to the *habeas corpus* on 'behalf of the prisoners committed by this House, are guilty of a 'breach of the privileges of this House,' and should be taken into custody. The lawyers produced to the Sergeant-at-arms a protection from the House of Lords,—assigning them to give legal assistance to their clients, and forbidding all Sergeants-at-arms to meddle with them. There is reason to believe that the Commons, with marvellous inconsistency, admitted the validity of this protection. The five suitors appear to have lain in jail till the end of the session; but this was speedily terminated by the Crown, which prorogued Parliament. Let it be stated that all these measures were strenuously resisted by the Whig party in the House of Commons;—the heir-apparent of the house of Cavendish taking a conspicuous part in the debate, ably support-

ed by Cowper and King, future Chancellors, and by the popular name of that lawyer who is handed down to posterity with grotesque respectability, as having 'never changed his principles or wig,' Sir Joseph Jekyll, afterwards Master of the Rolls.

The Lords on this occasion, as they have on many others, asserted the true principles of constitutional freedom. They found it necessary to declare, by a formal resolution, one of those elementary truths which, in ordinary circumstances, are too plain either to be questioned or asserted. 'Neither House of Parliament hath any power, by any vote or declaration, to create 'to themselves any new privilege that is not warranted by the 'known ways and custom of Parliament.' Again, 'The deterring 'electors from prosecuting actions in the ordinary courts of law, '*and terrifying attorneys, solicitors, counsellors, and sergeants-at-*'*law, from soliciting, prosecuting, and pleading in such cases, by* '*voting their so doing to be a breach of privilege of the House of* '*Commons, is a manifest assuming a power to control the law, to* '*hinder the course of justice, and subject the property of English-*'*men to the arbitrary votes of the House of Commons.*' *

But the original object of a war so violent, which could only be just if necessary, and for which the Commons first took up arms, was not left to be secured by their all-sufficient Privilege. It was afterwards happily settled by Act of Parliament. How settled? Instead of its being written in indelible characters in the great book of the English constitution, that the Commons only can judge on the subjects' vote at elections, and that an elector cannot sue the returning officer for refusing it, the Crown, the Lords, and the Commons, declared the very reverse; and gave the aggrieved elector a defined remedy for that acknowledged injury. In strict conformity with the principles of the common law, so ably maintained by Holt, as they had previously been taught by Hale, and were afterwards avowed by Willes, a Chief-Justice of almost equal reputation, the subject's right was established to do that freely at his own will and pleasure, which the House of Commons declared he could not do without a breach of their Privilege. The great lawyer last named distinctly repudiated all power in the House of Commons to make its voice heard in a court of law on that subject. 'I declare for myself that I will 'never be bound by any determination of the House of Commons, 'against bringing an action at common law for a false or double 'return; and a party may proceed in Westminster Hall notwithstanding any order of the House.'

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* *Lords' Journals*, Jan. 14, 1704.

Some other abuses must be dealt with *en masse*. The protection of the servants of members of Parliament from arrest had been recognised as a privilege from an early period; on the principle that their attendance on their masters ought not to be interrupted, while they were devoting their time to the service of the country. Though the reason could hardly be thought applicable during adjournments and prorogations, yet the privilege prevailed through the year, and during the existence of the Parliament. This most liberal allowance was pressed by abuse of the meanest kind to a boundless latitude. Many members raised an income by selling their protections to bankrupt traders; to needy debtors who could not, or to rich swindlers who would not, satisfy the just demands upon them. The practice appears to have been by no means uncommon, though Colonel Wanklyn, when detected, was expelled the House for it in the reign of Charles II.

The mere continuance, however, of the acknowledged privilege deserves the name of an abuse. No man could believe, in the eighteenth century, that the freedom from arrest of a member's servant was necessary, or at all conducive to the member's discharge of his parliamentary duty. Yet the exemption remained. The footman of a learned civilian was released, as a privileged man, by a vote of the House, from an imprisonment which he had incurred as the father of a bastard child.

The privilege of members themselves to be exempt from all legal process, was equally established by the prevailing practice, and was equally unworthy of a civilized country. However indisputable a plaintiff's right, he could not safely attempt to enforce it against a member either by action at law or suit in equity. But, while the House resented all recourse to legal process against its members, the habit of deciding matters in their favour by a process of its own became inveterate. To assert a right of way over a member's land was punishable as a breach of privilege: those who fished in waters wherein a member claimed an exclusive right of fishing, were sent to prison for breach of privilege: to replevy cattle distrained by an honourable member, however unlawfully, was a breach of privilege. An attorney sent a bill of costs to his client, which the latter thought too high. He might have had it taxed by the officer of the court; but, being a member of Parliament, thought the shortest proceeding the best, and procured the incarceration of the unfortunate and unpaid solicitor for a breach of privilege.

There is something remarkable in the inconsistency displayed by different parliaments, and their varying views of their own power;—now enthroning it aloft, now contentedly placing it in

the humblest position. Some instances have already been alluded to; but there was one privilege of the highest value, which few would deny to be essential to the functions of Parliament—the exemption from personal arrest. In civil actions, when the law was such that any one might restrain the liberty of any other by an affidavit, the inconvenience that might probably result to a just creditor from the release of his debtor in a particular instance, could not be weighed against the public mischief of exposing every obnoxious member to arrest. The law has ever regarded this privilege as sacred. In criminal cases, where the trial and conviction of guilty men is a paramount object, but the guilt can, in the first instance, only be suspected and charged, a practical difficulty arises, which, however, law and privilege, through the mediation of common sense, and with the sanction of time, had well overcome. It was perfectly understood that members might be apprehended on a regular charge of *treason, felony, or breach of the peace,* AND IN NO OTHER CASES.

During many years of the reign of George the Third, the domestic history of England is almost monopolized by the achievements of a restless and factious jobber, warring against an unpopular court and ministry; and their efforts to overwhelm him. The privilege of both Houses was exerted in this warfare. Having been imprisoned by a warrant of the secretary of state, not for treason, or felony, or a breach of the peace, but on an unproved charge of libel, John Wilkes sued out his *habeas corpus* in the Court of Common Pleas, and was by that court restored to his liberty; by virtue of his privilege as a member of Parliament. That privilege was allowed by Lord Camden and his brother judges, as a known part of the law of England. But no sooner did the minister find it convenient to remove an obnoxious member, than the obsequious and self-denying majority, in derogation of their own privilege as it had always been understood, came to the resolution—'That privilege of Parliament 'does NOT extend to the case of writing and publishing seditious 'libels; *nor ought to be allowed to obstruct the ordinary course of the* '*law* in the speedy and effectual prosecution of so heinous an 'offence.' *

This resolution was placed upon the table of the House of Lords, and their lordships concurred in it. The great speech in the

* *Comm. Journal,* 23d Nov. 1763. *Lords' Journal,* 29th Nov. 1763. The same journals, at the same period, are full of votes directed against individuals suing members, or their servants, in respect to their private rights.

debate was that of Lord Lyttelton.* 'Your Lordships will on no 'account depart *from that maxim, which is the corner-stone of all 'government*, that JUSTICE should have its course *without stop or 'impediment*. JUS, FAS, LEX, POTENTISSIMA SINT. Obstruct this, 'and you open a door to all violence and confusion, to all iniquity, and to the cruelties of private revenge; to the destruction 'of private peace, the dissolution of public order; and, in the end, 'to an unlimited and despotic authority, which we must be forced 'to submit to as a remedy against such intolerable evils. *The 'dominion of law is the dominion of liberty*. PRIVILEGE AGAINST 'LAW *in matters of high concernment to the public*, IS OPPRESSION, IS TYRANNY, WHEREVER IT EXISTS.'

These general sentiments, so just and constitutional, and expressed with such fervid eloquence, might have appeared, indeed, a little out of place as applied to a privilege which had been acknowledged to be lawful in a court of justice, and was founded on ancient practice, and on no slight reasoning. But mark the strange operations of this wonderful power of privilege!

Having a clear right of action against the two Secretaries of State, the Earls of Egremont and Halifax, for the illegal seizure of his papers under an illegal general warrant, Wilkes brought his suit against both; as well as against the messengers and inferior officers who had, by their orders, transgressed the law. Against these agents he recovered large damages; but when he was desirous of expediting his suit against the two noble peers, who were the real culprits, he found himself fettered at every step by the privilege of peerage. This privilege interposed a check and impediment to all his movements. While they were listening to the admirable sentiments of Lord Lyttelton, and probably encouraging the orator with enthusiastic cheers, the two Earls determined to forego no means of obstruction which, as peers, they could raise. Privilege was like the seventh charmed bullet in *Der Freischutz*, and gave a fatal wound to that very justice of which all the noble lords were so much enamoured. These delays prevented the trial of either of the actions till one of them was defeated by Wilkes's outlawry, the other by the noble defendant's death;—an instructive fact properly preserved by Mr Adolphus, on the same page which had just recorded the patriotic declamation of Lord Lyttelton against offering any impediment to the free action of the law.

The House of Lords condemned another libel from the same pen as a breach of privilege. It was an indecent sarcasm on Warburton, Bishop of Gloucester, who, some years before, had

* See Vol. XV. of *Cobbett's Parl. Hist.* p. 1365.

published, with commentaries, the works of Pope. As an editor of that poet, and of one far greater poet, the right reverend prelate had achieved the pre-eminence of being the worst of commentators; but we must not permit ourselves to deviate into the bewitching details of literary anecdote. The complaint fell to the ground in consequence of Wilkes's flight to France.

Wilkes was destined to struggle again and again with Privilege. Being elected for Middlesex, he was expelled as a libeller; a second time, too, elected without any opposition, and expelled. Chosen a third time by a majority of more than a thousand votes, he was removed from the House, which coolly ordered the return to be amended, by striking out his name, and inserting that of his defeated opponent in its place. The freeholders were disfranchised, and their elective right transferred to that majority which Mr Grenville had always found so willing to do the bidding of the ministers of the Crown,—by the vote of that majority at the dictation of those ministers. In vain did Lord Chatham and the whole body of the Whigs resist this notorious abuse of privilege. The privilege was to expel an unworthy member. The abuse consisted in excluding the expelled member when a second time returned by the constituent body; treating the offence of libel (of which, indeed, he had been convicted only by their vote) as a permanent disqualification. All traces of these unconstitutional proceedings were indignantly expunged from the Journals when the Whig party came into power.

The privilege of debating in secret appears to be something *sui generis*—something superior even to privilege itself. Under the name of a Standing Order, it has been always held to impose on the House the positive obligation of taking one step, and one only. For if any one member chooses to remark, in the Speaker's hearing, the presence of a single stranger during a debate, all the business of the House is instantly suspended till the stranger is removed:—a state of things wonderfully at variance with the supposed necessity for another supposed privilege—that of publishing any paper whatever, however injurious to others, in order that the representative may be enabled to explain his own parliamentary conduct on all occasions, to his constituents.

The exclusion of strangers (that is, of reporters, for the public has no interest in the attendance of any others) was not even frequent during the last fifty years: the results have sometimes been singular. The motion is generally made, or rather the stranger pointed out by some supporter of the ministers of the day, but so injudiciously and clumsily, that these have more commonly been ashamed and annoyed than relieved. At the outset of the war in 1803, Mr Fox attacked the conduct of the preceding negotiations in one of his ablest and most ingenious speeches, which

was circulated in the usual manner through the country and the world. The friends of government felt the immense importance of Mr Pitt's answer—one of his most powerful efforts, a strikingly eloquent incentive to a warlike policy; but this speech was lost to the country by the exclusion of the reporters. Again, on some complaint respecting the Prince of Wales's conduct towards his wife, an honourable member shut out the public from knowing what passed in the House of Commons by the ordinary and accurate reports of the newspapers, notwithstanding which, a tolerably full account of the debate made its appearance; the part which every member had taken was announced to the public, and though the line of argument might be less faithfully preserved, we may be sure that no unwelcome truth was lost, nor any severe animadversion suppressed. This glaring defiance of so notorious a privilege, whether proceeding from a member or an officer, or some lurking stranger, was prudently passed over; for no less glaring was the demonstration, that in our present state of society, secresy of debate is impossible. The privilege, though still nominally existing, is practically at an end; by a whimsical reverse, it is now never mentioned in either House except for the purpose of giving additional publicity to the reports of debates in parliament.

The exclusion of strangers in 1810 was in itself extraordinary; and was followed by consequences connected with our leading argument. The people of England at that period were ashamed and mortified by the disgrace that had fallen upon their arms in the expedition to the Isle of Flushing; and full of indignation at the monstrous mismanagement to which it was ascribed. A parliamentary enquiry was commenced; but the debates were kept secret. Strangers were excluded, and some harsh remarks were made in debate on the reporters as a body. A club, accustomed to meet and discuss public measures, propounded a question which reflected on the member who moved this exclusion, Mr Yorke; and on him also who indulged in those remarks. The placard containing the question was laid on the table of the House, which resolved to assert its dignity, and summoned the printer.

The charge preferred by Mr Yorke was not for libel or contempt, but (*credite, posteri!*) for a violation of the Bill of Rights! The process was opened by unfolding that great Constitutional Charter, out of which the clerk solemnly read two extracts; one from the list of grievances—'Prosecutions in the *Court of King's* '*Bench* for matters and causes cognizable only in Parliament,'—one from the list of securities against the repetition of grievances—'The freedom of speech, and debates or proceedings in Parlia-

[illegible] Parliament. [illegible] Bruce Ingram in [illegible] Street. [illegible] [illegible] Parliament [illegible] [illegible] [illegible]

Ministers, and the enquiry into the causes of our disasters at Walcheren defeated.

On a dispassionate review of these transactions, after an interval of five-and-thirty years, it is difficult to believe that they attained any one of their objects. Probably no doubt can now be entertained, that the exclusion of the public from these debates was unwarrantable; that the British Forum was justified in the substance of its censure, though perhaps too strongly worded; that the Bill of Rights was not invaded, except by those who so ludicrously brought it into the controversy; that common prudence dictated the passing over Jones's offence in silence; that the dignity of the House would have been more conspicuously vindicated by *refusing to take up* such a quarrel; that it would have been much more expedient to dismiss Sir Francis Burdett with a reprimand, than parade him through the streets of London, a triumphant martyr, to the Tower. But 'out of evil cometh good:' some advantage resulted, not the less valuable from being directly opposite in its nature to that which had been expected. The House of Commons refused to stay the action, or commit or threaten the party or his attorney, who appealed to the law. The House of Commons was not afraid to submit the existence, as well as the exercise of the privilege then disputed, to the decision of a court of justice. Nor was the court deterred from entertaining those questions, and hearing them largely discussed, though the attorney-general, as counsel for the Speaker, demanded a judgment favourable, on the simple ground that the plaintiff had been imprisoned by authority of the House. The privilege there acted upon was admitted by the court to afford a justification, not because it was claimed as a privilege by the House, or declared by them to be their privilege; but because it was a privilege of the House of Commons well known to, and always recognised by, the law. The remarkable passages in the judgments of Lord Ellenborough and Mr Justice Bayley, where they adopt the manly principles of their great predecessor Holt, and shake off the fetters by which former judges had permitted both themselves and their fellow-subjects to be enthralled, are alone an immmense gain to the cause of constitutional freedom.

The part taken by Sir Samuel Romilly deserves to be admired and studied. His *Diary** contains a most interesting picture of what was passing in his mind—a mind no less ingenious and reflecting, than upright and independent. He strongly objected to the penal visitation of both these offen-

* Vol. II. of his *Works*, 309-321.

ders—expressing his doubts whether their publications, being in fact no obstructions, could justly be punished as libels; but his clear opinion against violently prostrating all the safeguards so carefully provided by the recent law for persons accused of libel, and subjecting them to discretionary punishment at the mere will of their prosecutors.

On the 13th of August 1835, it occurred to the House of Commons to resolve 'that parliamentary papers and reports, 'printed for the use of the House, should be rendered accessible 'to the public by purchase, at the lowest price they can be furnished, and that a sufficient number of extra copies should be 'printed for that purpose.' And it seemed good to them, in March 1836, to resolve 'that such papers should be sold to the 'public at the price of one halfpenny per sheet; that a discount 'of 12½ per cent be allowed to the Trade, and that Messrs Hansard should account for the proceeds to the House of Commons.' As most of these papers consist of partial statements, often coming from an interested quarter, but bearing hard upon the character and interest of absent men, and as the appetite for attack is strong and general, it may be lamented, when this novel arrangement was made for their indiscriminate sale, that no precautions were taken for protecting individuals from slander by their publication. An *imprimatur* might here have afforded some security; the revision and selection of papers might have been entrusted to an impartial Committee. Supposing the privilege of circulating libels for money to be clear and indisputable, some means of rendering its exercise harmless would have been just and decent. But the manner in which it was exercised may certainly be cited under the head of abuses. We take as a sample, a petition presented to the House,—pouring forth in coarse language the most malignant and absurd calumnies on the present Chief-Justice of the Common Pleas; and on a jury, which, under his direction, had found a verdict against the petitioner. That jury had done no wrong; that learned judge had only performed his ordinary duty in a manner wholly blameless; yet, because the party lost the verdict, he imputed corruption to this jury, naming all the twelve; and the gentlest and purest of judges was held up to execration as a more capricious tyrant than Jefferies—a terror to his milder brethren on the Bench. This libel was circulated far and wide, at the cost of a few halfpence, under the sanction of the House of Commons, and necessarily bought and preserved by all who wished to have their Appendix to Parliamentary Votes perfect.

Certain Commissioners had made a report to his late Majesty on the interesting subject of prison discipline; which, in confor-

mity to Act of Parliament, was laid before the House of Commons. Their enquiries brought valuable information to the legislature, which it might also be desirable to publish. But they unfortunately had picked up on their way a trivial matter of detail, which led to a controversy between the Commissioners and the Court of Aldermen, respecting the management of the prison of Newgate. The Commissioners introduced the name of a person, without necessity, in such a manner as the law would deem clearly libellous. If the House had appointed such a Committee as we have alluded to, this irrelevant passage would probably have been left out of the printed copy—at least the person's name would have been struck out. The House, however, apparently without any examination of the contents, directed the whole Report to be printed and sold in pursuance of their resolution; and Mr Stockdale commenced his first action against Mr Hansard, the agent appointed by the House for that purpose.

The Chief-Justice of the King's Bench on the trial, was called upon by the defendant's eminent counsel, Lord Campbell, then Attorney-General, to direct the jury to acquit him, on the ground that the resolutions to print and sell justified this publication. The Chief-Justice thought otherwise, and expressed his opinion in strong language. The law, as he laid it down, might have been questioned, either on a motion in Court for a new trial, or by bill of exceptions; which would have transferred the whole matter directly to a superior court. But no such step was taken. The heavy damages awarded by the jury were paid without dispute.

A Committee was immediately appointed by the House, 'to 'examine precedents with respect to the circulation and publica-'tion of printed papers, and to ascertain the law and practice of 'Parliament prior to, and since the order for the sale of such 'papers. The Committee took a much wider range, deeming it also expedient to consider, in the most general terms, 'the sub-'ject of parliamentary privilege, and the jurisdiction of this 'House to determine the extent of its own privileges.' They affirmed the existence of that privilege, in the first place: they proceeded to resolve, that the liberty of publishing papers is an essential incident to the constitutional functions of Parliament, more especially to the representative branch of it. They added, that 'the institution of any proceeding to bring their privileges 'into discussion or decision before any other court or tribunal is a 'high breach of privilege; and renders all parties concerned therein 'amenable to its just displeasure, and to the punishment conse-'quent thereon.' They conclude with this never-to-be-forgotten admonition to the courts of justice, 'That for any court or tribunal 'to assume to decide upon matters of privilege *inconsistent* with

'the determination of either House of Parliament thereon, is contrary to the law of Parliament, and is a breach and contempt of 'the privileges of Parliament.'

We freely discussed, in this Journal, these not too clear, and not even very grammatical resolutions shortly after their appearance, and do not mean to comment upon them now. We proceed with the narrative of events. While the Committee were in deliberation, the same plaintiff had commenced a second action against the same defendant for publishing another copy of the same libel. The House, which had adopted the resolutions of the committee, but superadded another while this second action was pending—a resolution that this very act of publishing was in exercise of their privilege—then determined to defend the action for Hansard, and to plead in his name, as their predecessors in 1810 had done; when Sir Francis Burdett brought his action of assault and false imprisonment against the Speaker himself, for his warrant issued in obedience to a vote of the House.

The plea was Privilege. The plaintiff denied its validity as a defence, and the judges were thus compelled, by the act of the House, to decide that point. They heard arguments of great ability, and of very unusual length, and decided unanimously that the defendant was not justified. Each of the four judges delivered his reasons for thinking, first, that a court of justice is not bound by a declaration of either House of Parliament as to the extent of its own privileges; and secondly, that the order of the House did not protect its agent, when sued in an action for libel by a calumniated fellow subject.

Different opinions may be, and have been entertained, as to the correctness of this decision; but if the law can confer a vested right, this plaintiff, having obtained the judgment of a competent court in his favour, had a right to sue out execution upon that judgment, and he accordingly, in the common course, required the Sheriffs to levy his damages and costs. And if ever the law cast a plain duty on its officer, it was that so imposed upon these Sheriffs. They were bound by their oath of office, and must have been compelled by the Court, on application, to perform this duty. Yet that very House of Commons which had expressly refused to take measures for stopping the action; which had directed its officer to submit his defence to the judgment of the court; which declined to bring that judgment before a Court of Error, and did not, even by a vote, declare the judgment illegal—chose to interfere in this last stage, which their own proceeding had rendered inevitable. They strove by menaces to deprive the plaintiff of the fruits of this judgment, and actually incarcerated the Sheriffs for carrying it into effect.

The Sheriffs sued out their *habeas corpus*. And if the House,

following the precedent of Paty's case, had returned all these facts as the cause of detention, nearly the same question which was left undetermined in 1704 must have been decided. But they thought it became them to make a general return, that the sheriffs had been guilty of a contempt and breach of privilege; and the Court, in conformity with the authorities, was bound to give credit to this general charge, and remand the Sheriffs to custody; as they must equally have done if a similar return had been made by any competent court, and in strict analogy to what they lately have decided in a case brought before them from the *Cour Royale* of the Island of Jersey.

Upon this general survey of the proceedings of former Houses of Commons in matters of privilege, may we not rest the proof of our proposition,—a proposition in itself not revolting to reason? Is it not clear from experience and the evidence of facts, that the House of Commons, like every popular assembly, and every human institution, is capable of abusing its power? Here is frequent and flagrant abuse, both in the assumption of privileges when they did not exist, and in the mode of exercising them where perhaps they did. It is abuse, too, committed in all ages.

The champions of Privilege do not pretend any other security against its abuse, than public opinion—public opinion which may come limping, *pede claudo*, years after the mischief has been done, can never interpose swiftly enough to prevent it, and can never make amends for it. The respectful remonstrance of public opinion against the falsified return which placed Luttrell in the House, instead of Wilkes, as member for Middlesex, was treated by the House with scorn; and might even have been visited, in conformity with some precedents, with vengeance as a breach of privilege. But these same champions of public liberty, and trustees for the people, have suggested but one way in which public opinion can make itself felt—the rejection of the offending member, when next he presents himself as a candidate for a seat in Parliament. And if he happened not to have obtained a seat in the Upper House, by creation or succession, and if he had performed those promises of bribery which possibly procured his former election, and if he coveted the honour of representing one of the newly enfranchised boroughs, or any popular constituency, it is possible that at the end of four, or five, or of six years, the victim of an unjust persecution, or his widow, or his or her executors or administrators, may hope for the satisfaction of seeing the abettor of injustice thrown out of his seat. But all men are slow to suspect the government under which they live; the people of England habitually confide in their own branch of the constitution. Abstract possibilities of danger do not disturb the repose of the great

majority. Let us not deceive ourselves; force and its consequence, success, dazzle men; and bold acts of tyranny are not very unpopular. Neither Henry VIII. nor Cromwell have received the just measure of indignation from posterity. Violence may even command praise and sympathy, if its object be sagaciously chosen. Most of 'the people out of doors' who gave a thought to the sentence on Edward Floyd, probably said that he was rightly served for being a bloody Papist. The imprisonment of the Sheriffs in their year of office, was a good joke for some in the House, and no doubt for many out of it. When allusion was made to the possibility of so dealing with the Judges, it was consistently treated with some merriment. The propensity in vulgar minds to take part with the strong against the weak, when unjustly trampled upon, is a most important fact in the history of human nature. That it exists, all experience proves. The cruel punishments of Prynne and others in the reign of Charles I., excited more scorn against the sufferers who were made ridiculous, than indignation against their hateful oppressors. This is the direction in which the current of satire is too ready to flow. We noticed in our last Number the proud triumph achieved by the true patriot, Daniel De Foe, when, sentenced to the pillory for his virtue, he was greeted by the disabused people with applause, instead of being covered with insult. But we had also to record of a man of letters, a wit, and a divine—no meaner a judge of human nature than Jonathan Swift—that he speaks of this same man with contempt, *because* he had been in the pillory. The lesson is taught by him, *qui nil molitur inepte*, when his hero, Jack Cade, wins the hearts of his followers by establishing the privilege of uttering bad grammar; and condemns the Lord Sands (after a suitable admonition) to be hanged with his pen and inkhorn about his neck; for the enormity of talking of a noun and a verb, and such heathenish sounds as no Christian ear can endure to hear. And it is this evil principle which gives importance and value to a system of fixed laws, administered by known and responsible officers, in preference to summary jurisdiction, to be exercised at discretion by that 'tyrant majority,' which is so often tempted to throw aside all the restraints which reason and justice would impose.

No single instance occurs to our recollection, of a member losing the favour of his constituents for a corrupt vote on an election petition; or an absurd one on the privilege of staying actions against members of parliament; or a tyrannical one for expelling a member, or imprisoning a supposed delinquent. Even the proceedings against Wilkes, with all his popularity, do not appear to have led to such a result. Public opinion was at the moment,

indeed, strongly excited; it was almost goaded to madness and rebellion. But other subjects engrossed attention, and this wrong was no more avenged than it had been prevented, by public opinion. The late votes against Mr Stockdale and the Sheriffs were never brought up at a contested election; yet disapprobation of the measures was manifested by the verdicts of successive juries, whose English hearts burned within them,—inflamed by the single thought, that Privilege was assuming to overrule the Law; and who awarded large and increasing damages in actions most unreasonably brought, though no personal or party feelings were engaged on either side of the quarrel.

Public opinion, then, though it may find some irregular means of venting its anger against oppressive and unjust proceedings, sometimes at the hazard of general tranquillity, does not, and for obvious reasons never will, administer that legitimate check and control over them, which is appealed to as the only barrier for the protection of the people against abuse of privilege: much less will it give redress to the injured.

The unfortunate difference between the House of Commons and the Court of Queen's Bench was brought to a conclusion by an Act which gave to both Houses of Parliament the power of publishing any paper, upon their own views of expediency or necessity; and of protecting their publisher from actions for libel by the certificate of their Speaker—informing the court where such action might depend, that the publication was by such authority. This Act originated in the Lower House, and is well known to have owed its success in the House of Lords mainly to Lord Denman; who supported it there against a strong opposition, and extended its provisions (as common justice required) beyond the immediate agents of either House, to all publishers who should circulate true copies, or faithful abstracts, of papers which had been printed by its authority. The advocates of uncontrolled Privilege consistently opposed this Act, which was regarded as a compromise, and were naturally disgusted with so fatal a blow to their claim. For they perceived that a sole jurisdiction of declaring what privileges they pleased, with an all-sufficient power to enforce their declaration, is utterly repugnant to their submitting to ask assistance from the other two branches of the legislature for that purpose.

In passing the Act of Parliament, it was taken for granted that private feelings would be considered in these publications, and that nothing injurious would be sanctioned without an ascertained necessity. This must have been at all times the wish of honourable men, engaged in enquiries connected with great public interests, and unbiassed by personal motives. Publicity, in its

general results, is undoubtedly the friend of truth; it is, moreover, unavoidable in matters of general concernment. Even where it brings out the names of private individuals, it affects them much less than they themselves could expect; since due allowance is made for *ex parte* statements, character cannot permanently suffer without a full investigation, and the most careless have been taught to suspend their judgment till all the evidence is laid before them.

The Act protects none but those who *print* by the authority of either House of Parliament, and thus enables a sufferer to proceed against the informer who has falsely accused him. The false accuser is dragged into the light by its operation; and to him it holds out no indemnity. Suppose, then, that a malignant enemy, or an interested competitor, plans the ruin of an innocent man by slander; and finding a parliamentary committee engaged in some enquiry connected with his office, his trade, or his profession; and knowing the good opinion of certain respectable members of the committee to be important to his success in the world, to his character and general estimation, he is tempted to come before them with calumnious attacks: certain that these will be whispered about in society, that probably they may find their way into a Blue Book, and be proclaimed to all who take an interest in the subject, at the public expense, and under the most venerable public sanction. A friend who heard the statement, draws to it the attention of the injured man—informing him that his reputation is gone for ever, unless he promptly refutes the slander. Conscious of his innocence, able to demonstrate the falsehood of every allegation against him, furnished also with proof of the malice of his adversary, he commences an action against his false accuser—not against the printer who has been ordered to record his testimony, but against the inventor of a lie that may work his ruin.

Suppose this case, and that the defendant should apply to the House of Commons, and charge the plaintiff with breaking its privileges. The answer most naturally to be expected *a priori* from the House, is scorn and derision. Or, indeed, the member to whom the petition was confided, might with propriety spare the House all trouble; and at once tell his constituent, that to his case no considerations of privilege could possibly attach. 'What!' he might say, 'do you admit that 'you have been uttering falsehood from malignant motives, 'wronging your neighbour, deluding the committee by misrepre-'sentation, (itself a high contempt,) and inducing the House to 'circulate your slander through the country at a halfpenny a

'sheet? and do you think that the House will screen you from 'the just reward of your wickedness? The very supposition is 'a libel on the House. Rather fly from the wrath that awaits 'you at the hands of those whom you have thus betrayed into 'the commission of an outrage, which never can be repaired 'but by the action you complain of.'

If the defendant should protest his perfect innocence, and affirm that he has candidly stated the truth, and innocently afforded valuable information tending to the redress of a public evil, the answer is equally obvious—'This is no matter for petition; the House 'neither can nor ought to interfere, having no means of judging 'between you, no power to do right to the plaintiff if injured by 'false charges, nor to you, if you have acted honestly, and are at-'tacked for telling the truth. This interference with the com-'plaint preferred against you can do you no good, unless that 'complaint be well founded; if it is groundless, the action brought 'enables you to vindicate your veracity and public spirit in the 'only effectual manner, in open court, by the verdict of a jury 'given after hearing evidence on both sides.'

Yet we find it recorded in the journals, that a person who complained of such an injury, and brought his action for redress, was threatened with the displeasure of the House of Commons, and the punishment consequent thereon; and both the plaintiff and his attorney were frightened into an abandonment of the action. The public took no alarm, for the general mind was wholly occupied with gainful speculations. Some few thinking men observed the vote with anxiety, and soon more materials for wonder were afforded them. For another humble suppliant bowed himself to the ground,—notifying to the House that he had received an injury of the same nature—that his name had been fraudulently signed to a false petition—that his character was suffering from this unauthorized act, almost amounting to forgery, and could be justified by no other means than bringing an action. Such, however, is his veneration for the great assembly which has given publicity to the libel, that he will not think of invoking the aid of the law without the previous permission of that assembly; and so entire his confidence in its justice, that he is certain that the permission will be granted. We are told that his earnest petition for an object apparently so just and reasonable was rejected with menaces.

The precedent so lately set was likely to be followed in the Upper House, if similar circumstances should appear to make it applicable; to hesitate where the Commons had acted so promptly and decisively, might have implied a want of proper spirit. We must confess that the petitioner, the party sued, was ushered in before their lordships in the most favourable manner. His sponsor

was the Duke of Richmond, a nobleman more elevated by his qualities than even by his high rank, whose approbation is praise. He was introduced as a veteran soldier, who, like the Duke himself, had served with reputation under the Great Captain in Spain and at Waterloo; as one whose military service had been rewarded by a responsible office in the police force; and who, in that situation, had collected information, which he was compelled, by an order of the House, to lay before the Committee on the laws against gaming. It was added on the same authority, that the information was all true, and that the action was brought against him by one who justly suffered from it, being guilty of all the enormities imputed.

After such a description of the cause and the actors, it might seem wonderful that the case was not at once disposed of by acclamation—by immediately punishing the breach of privilege already committed, and stopping all further proceedings. An instant decision was pressed for; but the Lord Chancellor, the Lord Chief-Justice, and Lord Brougham, obtained a few hours of delay, that the decent ceremony of searching for precedents might be performed before a new precedent was added to them.

The Committee reported those 'most immediately applicable 'to the matter of the petition.' They did not cite the unrescinded resolutions of the Lords in 1675, and in 1704, cited above; nor that which followed Lord Lyttelton's speech in 1763. But the cases in point to which they directed attention, were in number, four. One of them was in 1768. Biggs sued Hope for having, '*in obedience to the orders and immediate commands* '*of the House*, taken him into custody' for riotous behaviour, which obstructed the approaches of the House. 2. Hyde, a magistrate, in 1788 caused Aldern, a constable, to be indicted for *an assault in obeying the orders of the House*, in refusing Hyde admission to Warren Hastings' trial, without a ticket. Defendant had been honourably acquitted, but Hyde was committed for his contempt in preferring such an indictment. 3. Wharton, in 1826, was summoned for writing a letter tending to a challenge to Fonblanque, in consequence of words spoken by *the latter in arguing a question as counsel at the* bar of the House; he apologised and was discharged. 4. The noted umbrella case stood last. It appears to have been thus: Frederick Plass, one of the doorkeepers of the House, complained to their Lordships that John Bell had served him, *when attending his duty in this House*, with two processes from the Westminster Court of Requests; and Bell informed Plass, 'that the first process was issued 'to *recover the value of an umbrella left by Mr Bell with this* '*Plass on the night of the Friday preceding*; that *Bell gave him* '*the umbrella, and he put it away in the usual place*; that on Friday

'the 23d Bell served Plass, *when on duty in this House*, with an 'order from the Court to pay Bell 17s. 6d. debt, and £2, 10s. 'costs, for the use of Bell.*

These cases could not be supposed to furnish an example of staying legal proceedings commenced by one slandered by false evidence before a committee. But they must have been thought to rest on a principle which would justify a vote for so doing; and as their Lordships immediately came to such a vote, we must presume that such a principle was extracted from them. By what process, we own ourselves incapable of discovering. The last case, that of the umbrella, which was the most relied on, is evidently a punishment for serving the process of the Court of Requests on one of the officers of the House, while there attending its service. Most clearly, on perusing it, no other offence is charged.

The production of these documents, and of several others so much less like the case in hand, that the committee did not regard them, gave but a short respite to the plaintiff and his attorney, who were summoned, and released on their assurance that they had intended and were conscious of no offence; but that, having been so unhappy as to incur the displeasure of that august assembly, they would discontinue the action. On the motion for requiring this of them, the Speech and Protest of Lord Brougham were made. They will be the text on which all future commentaries on the use and abuse of privilege must be written—the treasury from which all arguments must be drawn. They are too generally read to be here copied or abstracted; but some observations on points of detail may not be wholly superfluous.

Adverting to the noble Duke's description of the transaction, and the parties to it, Lord Brougham remarks, that these might have exhibited the reverse of that description in every respect. Consider now for a moment how the question would have stood, if that had been the case. Suppose the petitioner to have been the keeper of a low gaming-house, who, before a committee for enquiry into the state of the police, had volun-

* A case nearly in point might have been found in the Commons' Journals, in the 3d year of William III. Sir Ralph Megget petitioned against an election for Southwark, and was *reported* to have said that he was sure of a majority, right or wrong. For this saying he was sent to jail. As he denied having ever used such words, he sued the slanderer for falsely imputing them, and was sent to jail a second time for this breach of privilege!

good one? Is the distinction just? Is it in the genuine spirit of that Privilege, so potent for the destruction of private rights, to be suddenly paralysed by a conflict with the Crown?

If the object of such prohibitory resolutions be thus questionable, the means of enforcing them will hardly appear more praiseworthy. A party is imprisoned and fined by payment of fees, that others may be deterred from asserting a just claim for redress; in perfect ignorance that he has violated any privilege. His attorney is sent to jail for exercising his profession for the advancement of justice. If *he* knew that this might be styled a breach of Privilege, he could not know that the House would think proper to take it up as an offence. Counsel have hitherto been spared. The times in which we live have hitherto been relieved from witnessing such scenes as the House, from a sense of dignity, acted in the reign of Queen Anne, when the Sergeant-at-arms was playing at hide-and-seek with eminent Barristers in the Temple cloisters; and had to inform the House that he had wellnigh caught one, who escaped at the hazard of his neck, by the help of his sheets, from a back window up two pair of stairs. Even these harsh measures may fail to extirpate the heresy, and put down contumacy. Late experience may teach this to the most careless observer; for the disinterested love of martyrdom is implanted in some breasts by nature, and others have courted it successfully as a profitable speculation. It is perfectly notorious, that a skilful watching of the Table of Terms and Returns may enable the practitioner to commence and conclude his action, so that the damages and costs may be levied and paid before it is possible for Parliament to interfere. On their re-assembling, their first step might probably be to visit with their high displeasure all who had been concerned in the discussion or decision; not only parties, counsel, attorneys, sheriffs—and why not witnesses and jurors also?—but certainly, in the terms of the resolution adopted by the last Parliament but one, the judges of those courts and tribunals which may have decided 'any matter 'of privilege inconsistent with the determination of the House.' But the object of the plaintiff and his attorney would be in the mean time fully attained.

To meet this danger but one expedient can be devised. An address might be presented to the Crown, just before the usual time of prorogation—praying that Parliament might not be prorogued, but that the two Houses might adjourn. The Crown again! What if the Crown refused? What if the Lords dissented?

A remark of a more general nature must here be introduced. In case of any difficulty in the execution of any warrant issued

by the House, who must supply the force requisite for that purpose? The Crown.

These inconvenient consequences are hinted at with reluctance, and not without pain; because they might occur where Privilege was not obstructing the law, or squabbling with its officers, but manfully engaged in a noble and legitimate contest, in the discharge of its highest duties, and in defence of the real liberties of the people. But they may supply forcible reasons for acting with caution in a matter of so much delicacy, and against overstraining powers, in their own nature hard to be wielded. And it is indisputably true, that every exercise of privilege which wants the sanction of public opinion, and is condemned by considerate men, must weaken its authority on other occasions, when all such would wish to see it active and triumphant.

We have just touched upon the most striking, perhaps also the most really important, part of this great subject—the relation which it bears to, and the influence which it must have upon, the administration of the law in our Courts of Justice. And here, in the first place, we would state our strong sense of the unfortunate position which this question has assumed. The disagreement that has arisen is in itself a great calamity. It is a lamentable thing if a Court of Justice has denied the existence of a real Privilege of Parliament; or if the House of Commons has asserted as a right that which the Courts can justly refuse to recognise.

But if the reports obtained through the ordinary breach of privilege may be trusted, strange misconceptions appear to have been engendered in the heat of controversy, and to have taken possession of some superior understandings. The controversy has been regarded by many as a struggle for political power. A foreigner might have imagined that two great rival bodies in the state were contending for the same authority, and aiming to secure thereby a preponderance in the machine of government—as if the House had, in direct terms, insisted on the right of inspecting and reviewing all the judgments of all the Courts; or the Queen's Bench had affected to impeach ministers, or grant supplies, or decide on a disputed right to sit and vote in Parliament. An opinion was growing that the court was obstinate and presumptuous; and that as the weaker body it ought, by reason of its comparative weakness, to have abstained from disturbing the public tranquillity, by yielding up with a good grace the point in dispute.

A very little reflection must explode this fallacy. The House of Commons, like every other privileged body, may exercise its judgment on the propriety of acting at any particular crisis.

Both Houses wilfully connive at a daily invasion of an undoubted privilege committed by every newspaper in publishing their debates. They may also imprison for a libel, or forbear to imprison, as, on a view of all the circumstances, they may think fit. Under the recent Act, if a bookseller were sued for something contained in a Blue Book, the House would have to consider whether they ought to direct the Speaker to send his certificate to a Court of Law. So, if it had been made clear to the House, that the plaintiff Stockdale had really suffered in his character or fortune by a publication culpably negligent; or that the plaintiff Howard had been needlessly annoyed by the Sergeant-at-arms in the execution of his warrant; the House might have declined to interfere in behalf of either defendant. Cases may well be conceived, in which they would address the Crown to make compensation to the injured man; others, in which there would be no injustice in leaving their officer to abide the consequences of his own misconduct.

But the Court is in no sense a party. The parties in the late proceedings were those whose names appeared on the record as plaintiffs and defendants in the respective actions. The House of Commons elected to become a party, by a process not unlike that of interpleader, taking up the defence of its agent and officer. The Court put forward no claim whatever. Being set in motion by the ordinary means, it attempted to do no more, and it could do no less, than exercise the jurisdiction entrusted to it by the law and the constitution. It could not prevent the plaintiff from suing out his writ of summons, or filing his declaration, or demurring to the defendant's plea, or demanding judgment. The Court can never be a party. Individual judges might be made parties against their will, if they incurred the high displeasure denounced, by being involved in the penal consequences flowing from it; as we commonly style the convict a party to that process which may terminate in his imprisonment, exile, or death.

In the case where judgment was suffered for want of a plea, the Court was merely passive—an instrument in the plaintiff's hands for obtaining the damages awarded by a jury, as ignorant of what was passing in its name as the steam is of the progress of the Train. So when the defendant pleaded the privilege of the House of Commons as his justification, and the plaintiff by his demurrer questioned its sufficiency, the duty imposed on the Court was different, but was in the same degree clear, restricted, and inevitable. Their duty was to hear what could be urged by Counsel on both sides, and determine according to law—that is, to the law as it existed in their own opinion, and not another's.

Each party had a right to require them to form this judgment, and to declare it. Some distrust of their own first impressions may have been inspired by the opposite views proclaimed in an assembly so enlightened; but they could no more deprive the plaintiff of that benefit—which, after full consideration, they were convinced the law conferred upon him—than the Prophet of the Lord could utter any other words than those which his great Master commanded.

A distinguished member of the legal profession from our own part of the island, is reported to have expressed, in the House of Commons, an opinion, that a Scottish court, if placed in the position of the Queen's Bench, *would have given way.* We hope that he did not profess that sentiment, and believe that it is unfounded. It would exhibit a distinction between the Courts sitting in London and Edinburgh not very honourable to the latter. At least we are certain that so learned and honourable a person, if, when holding a judicial seat, he shall be tried in so severe an emergency, will find that he *cannot* act upon his own doctrine. Should he in the seat of justice be threatened with the displeasure of the Crown or of the Parliament, in the event of his coming to a particular decision, he will answer, 'It is not necessary for me to please 'either Crown or Parliament, but it is necessary for me to do my 'duty. I can listen to no expression of *voluntas pro ratione.* It 'is for the purpose of controlling that will of another, that my 'reason is called upon to decide.' The important principle requires to be frequently asserted—more especially in these days of compromise—that judicial duties are not vicarious, and cannot be delegated. Parties may waive their rights, rather than suffer an inconvenience at their own mere option; with Counsel and Attorneys the question of casuistry may strike different minds in different points of view; but the Judge cannot run away from his duty, or leave it to other hands.

A perusal of this now voluminous controversy, shows that the Judges thought it had reached a point in which only one decision was possible; as soon as the doctrine by which alone the defendant could succeed, appeared to be at open variance with first principles. When they found his justification to rest not on the long enjoyment, the expediency or necessity, of the privilege, but on the fact that the House declared it to be a privilege, they thought their own task ended; and anticipated the concurrence of all who knew that we live under a system of laws, and are subjects of a mixed government. 'For here,' (as more than one of them distinctly intimates,) 'we find a direct claim of 'arbitrary power for one branch of the legislature, which implies 'the entire subversion of all law.' This looked like a *reductio*

ad absurdum—a bar to all further argument; the proposition was stranded, nor could law or common sense float it over such a shoal.

Among the *dicta* of Judges, cited on the argument, was one in the time of the usurpation, when the Upper Bench refused to discharge Captain Streater on his *habeas corpus;* simply because he had been committed by order of the Parliament. 'Some one 'must be master,' said the Chief-Justice. And no doubt; in every state an ultimate arbitrary power without appeal must, under all governments, somewhere exist. The question is, where? The answer of all dispassionate enquirers can be but one—in the three Parliamentary Estates of the realm—in Queen, Lords, and Commons. It is grasped by one in the name of Privilege, as it had formerly been by another in that of prerogative. The constitution has lodged the sacred deposit of sovereign authority in a chest locked by three different keys, confided to the custody of three different trustees. One of them is now at length, after ages of struggle, effectually prevented from acting alone; but another of the two is said to enjoy the privilege of striking off the other two locks, when, for any purpose of its own, it wishes to lay hands on the treasure.

The *argumentum ad hominem* was clothed in various disguises. 'You yourselves, ye judges of Westminster Hall, enjoy the 'arbitrary power that you would condemn. Your decrees are 'final, the execution of them is without appeal; and, further-'more, they are frequently wrong, for they are reversed on 'error.' An arbitrary power in the judges! bound as they are by statutes and rules, by authorities, precedents, and forms; their judgments reversable by two successive courts of error; their members subject to impeachment for malversation and oppression; and to removal for ignorance or incompetency, for partiality, or intemperance, or indiscretion, or any ill quality that can impair the usefulness or efficiency of a magistrate!

But then, it is said, the course of study which lawyers must pursue, disqualifies them from comprehending these high matters. Their habits cripple the mind and weaken the perception. Privilege is understood by few; its mysteries can only be fathomed by a reach of thought, not to be expected from professional men. 'It is too wonderful and excellent for you '—you cannot attain unto it.' The faculty is confined to the members of either House, and need not be sought for, as it cannot be found, beyond their walls.

We have heard such remarks gravely made, with the sincerest respect towards themselves, and to the disparagement of others, by some such men as would have supplied Shakspeare with

additional *dicta* to enrich the illustration of his dignified favourites, Dogberry and Shallow. The solemn and empty formality of some, who lamented the narrow-mindedness of the judicial body, has given their sentiments the appearance of too bold an irony. But, to treat this topic practically, it must be admitted that in fact the subject of these debates is, for the most part, avoided by the statesmen, the merchants, the landed proprietors, and left to the lawyers; to that very class whose disqualification, from professional habits, is thus assumed. We think it rightly left to them, as most conversant with the discussion of such principles;—all the more if they have also enjoyed a seat in the House of Commons. But in that case we might respectfully ask, why such persons, after they had passed the best twenty years of life there, are to be suddenly denuded of all that could be learned there, on being promoted to the Bench; and why a younger lawyer, by any means which can obtain him a seat in Parliament, before his studies have terminated, or his practice begun, becomes suddenly endowed with the gift of penetrating these mysteries.

There is no mystery in it. We have no College of Augurs in St Stephen's—no freemasonry envelopes the archives. When Privilege comes under examination, we all have equal access to the same sources. We resort to the same books, which open of themselves at the same well-known passages. If, in ancient times, some of the Judges have addressed the legislative bodies in tones of self-abasement on the one hand, and of reverence, approaching adoration, on the other, to avoid the embarrassment, and perhaps the danger, of interfering when Privilege was named, others, in the very earliest times, have fearlessly proceeded to examine and decide upon it. This is abundantly exemplified in Mr Justice Holroyd's learned discussion of the case of Burdett *v.* Abbott—one of the ablest, clearest, and fullest arguments ever addressed, even by that great lawyer, to a Court.

If some Judges have been disposed to compliment away the liberties of Englishmen to either House of Parliament, it is no more than others did in evil times, to conciliate the favour, or avert the high displeasure of the Crown. If some have refused to suspect the possibility of a majority of the Commons staying an action from improper motives; others have refused to liberate members of Parliament, who sued out their *habeas corpus* when imprisoned by the King for words uttered there in debate. Never let it be forgotten, that by the opinion of a majority of the Judges, when holding office at the will of the Crown, the King could impose a tax of his own single authority, and rule the land without any Parliament.

Lord Holt's conduct was as different from theirs as honesty

from servility, or light from darkness. When John Paty was brought before him, imprisoned by the House of Commons for the crime of bringing a lawful action, he thus expressed himself—'I will suppose that the bringing such actions was declared 'by the House of Commons to be a breach of their privilege, 'but that declaration will not make that a breach of privilege 'which was not so before. But if they have any such privilege, 'they ought to show precedents of it. The privileges of the 'House of Commons are well known, and are founded upon the 'law of the land, and are nothing but the law.' In another part of his admirable judgment, 'I shall,' he says, 'presume to 'maintain that here is no privilege broken, for I take it for 'granted that privilege is stated and settled by the law of Eng-'land, and is not an uncertain and undefinable thing.' *

These sentiments are not the emanations of a feeble or narrow mind. Such epithets might perhaps be more justly applied to those who forget that the laws were entrusted to their administration for the protection of the people against all arbitrary power, by whomsoever assumed, or threatened. Such epithets might with more propriety, though perhaps not without irreverence, or even danger, be transferred to those who have employed language so unworthy of their stations; or to some who have thought to build so wide a superstructure as arbitrary power on so minute a basis, and who, in a dream of self-complacency, have fancied that their own powers could be enlarged beyond all control, and the essential boundaries of the constitution removed by expressions like these, however frequently repeated.

It is not unworthy of notice, that the great case of Stockdale *v.* Hansard, which principally brought the present subject under general discussion, presented perhaps as many obstacles to the reception of our general views, as any that could have been imagined. It was an action for libel, and excited that sensitive jealousy in the public mind, which keeps guard over the freedom of the press. Moreover, the doctrine there maintained, appeared likely to prevent the circulation of important knowledge.

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* He illustrates this by well-known examples. Privilege does not extend to treason, felony, or breach of the peace, nor did (till the decision of the House of Commons against that of the Court of Common Pleas) to libel; from the time of Wilkes's arrest till the Rockingham administration was appointed. The privilege of the House of Lords to fine for contempt, is not shared by the Commons. The former may imprison for an indefinite time, the latter only during a session. The former can examine upon oath, not so the latter.

Thus the literary public, happily now almost the entire public, took an alarm which would be merely absurd with reference to false witness before a committee. That the decision of the court was correct in law on the minor point, whether the privilege of publishing afforded protection to the agent of the House of Commons for a libel upon a private man, has hence been doubted by some—who overlooked an obvious distinction between the freer circulation of every kind of knowledge, which has become habitual and almost unavoidable in modern times—and the claim of a privilege to communicate documents to the public, in exercise of the real functions of Parliament.

This distinction was most clearly laid down by Lord Hale and the whole Court of King's Bench, in the case of Lake *v.* King, reported in the first volume of Saunders's Reports, and applied by Lord Erskine, in his usual luminous style of reasoning, to the case of R. *v.* Stockdale, before adverted to. 'Before they sent 'their Attorney-general to prosecute in this place the publica-'tion of answers to their charges, they should have recollected 'that their want of circumspection in the maintenance of their 'own privileges, and in the protection of persons accused be-'fore them, had given to the public the charges themselves, 'which ought to have been confined to their journals. The 'course and practice of Parliament might warrant the printing 'of them for the use of their own members, but here the publi-'cation should have stopped, and all further progress have been 'resisted by authority.'

We do not, however, propose to argue the doctrine there laid down, after the fullest consideration. It is established and must be received as good law, since it was, though unpalatable to the most powerful assembly in the kingdom, perhaps in the world, acquiesced in and unchallenged; neither impugned in the Exchequer Chamber, where ten additional judges might have been called in to reconsider what was done by four in the King's Bench; nor submitted to judicial scrutiny in the high tribunal which unites the advantage of consulting all the judges of the land, with that of a forensic discussion by the first and ablest advocates, after all the materials have been frequently examined, and full time has been employed in maturing its deliberations. That high tribunal being also a House of Parliament, interested in maintaining all just privileges, and bound in duty to preserve them.

Strange to say, this very advantage was by some treated as an argument against bringing a writ of error. 'What! can it 'be endured that the privileges of the Commons of England 'should be placed under the control of the Lords?' The answer is clear—that consequence *must* attach on any proceeding at

law, in which a claim of privilege can fall to be considered in a court of justice. Unless the words of the resolution, forbidding Privilege to be brought under discussion or decision are to be so literally construed, that the Speaker was wrong, when sued by Sir Francis Burdett, in defending himself by the plea of privilege; and unless Mr Hansard was guilty of a contempt in resorting to the privilege of publishing for his justification in Stockdale's action; and unless the Sergeant-at-Arms was wrong in pleading the Speaker's warrant to Howard's late action of trespass, (which would be difficult to assert, seeing that the House of Commons directed this course to be taken in each of these actions, and in the last has actually sued out its writ of error,) the court must give *some* judgment on the record before them; and either party must have the right to submit that judgment, whatever it may be, to revision in a superior court. Thus, if the Queen's Bench had decided against the plaintiff, *he*, like Sir Francis Burdett, might have endeavoured to obtain a different decision from the House of Lords. On that occasion Privilege was allowed as a legal defence; but many of the most enlightened friends to the constitution were much more disposed to lament, with Sir Samuel Romilly, the summary proceeding out of which the action grew, than to wish for its extension or repetition. Say what we will respecting the obstructions that libels may produce, the union of so many offices in one body, acting as lawgiver, prosecutor, judge, jury, and executioner, under circumstances, too, where the worse the libel the greater heat must be excited—has something scandalous in its aspect. If it is not inconsistent with justice—the first requisite of penal visitation in a civilized country—it can hardly command that freedom from suspicion, and consequent public satisfaction, which is the second, but almost equally important object. And when each one of the inferior Courts, trusting to their character for its own vindication, had for near a hundred years discontinued the proceeding by contempt for libel, which the Commons' Committee urged as their precedent—it seemed unfortunate that the popular branch of the constitution resorted to physical force, guided by no other impulse than its own sense of the injury.

All, however, will admit, that between summary punishment for acts really offensive and contemptuous towards the House—and the stay of actions between two of her Majesty's subjects, brought for determining their private rights—no comparison can be drawn. If the officer or agent of the House is always to be thus protected for what he does in that capacity, we would humbly ask, whether a stationer dealing with Mr Hansard in the articles of his trade, on the one hand, and the Blue Books on the other, must be restrained from bringing an action on the balance, or

filing a bill for an account? The attorney or the counsel, who felt a prudent regard either for the client or for himself, taking warning from the recent votes, would assuredly advise him to sit down with his loss. And if plaintiffs may be restrained from commencing actions, it must be equally proper to restrain the parties sued from resisting them. The arm that annihilates the right to sue, cannot be so shortened as to leave the same person free to defend, when the same point is in issue.

We have already glanced at one subject, which cannot be too seriously considered. It has not escaped Lord Brougham, but occupies a prominent place in his Protest. We mean the fact, that, in modern times, the Minister and the majority of the lower house of Parliament are of necessity closely allied—we ought perhaps to say—completely identified. *Eadem vocabula.* But Privilege, while it retains its name, has wholly changed its position and office. No longer the bold antagonist of Prerogative, and the intrepid guardian of popular rights against the usurpation of the Crown, we may be sure that its aid will be invoked, if arbitrary designs should be entertained. We affect no apprehension on this score at the present moment; but we cannot forget that, in all the strong operations of Privilege during the last hundred and fifty years, it has worked the will of the Ministry for the time being; thus engrafting on powers carefully restricted by law an unlimited power, in the name of Privilege, to accomplish any object of the Crown.

If the House of Commons had declared General Warrants lawful—still more, if they had addressed the Crown to issue them for the effectual suppression of John Wilkes and his libels—he might possibly have been punished for questioning their legality afterwards in the Courts of Justice. The same thing might happen whenever popular feeling should be strongly excited. For example, if a foreigner or a subject were now minded to question the legality of opening letters at the Post-office, by Government authority, some means for crushing the enquiry, by the intervention of Privilege, might be dexterously employed. In like manner, if some antique remnant of feudal sovereignty should be set up by the Crown, either in its own right, or as appertaining to the Duchies of Lancaster or Cornwall, the subject who should, either by action or by plea, assert an opposite right, might find Sir W. Gossett an unexpected visitor at the consultation, and himself, his counsel and attorney, suddenly lodged in Newgate; while the Crown would thus travel to a favourable termination of a legal point by a short road, more royal than royalty itself.

One view of the subject, and a most important one, is taken by Lord Brougham, which received no answer from the Privi-

lege party. How, he demanded, can you effectually protect your witness from an action? You may commit the plaintiff, and his attorney or his counsel, but that does not put an end to the action. You may order the defendant not to plead, but the action goes on; the plaintiff obtains unhesitatingly judgment for want of a plea, and a writ of enquiry ensues, damages are assessed, and execution is levied. Nay, even if the Judges are imprisoned, still the action survives. Nothing can more plainly show how completely these boasted privileges are at the mercy of any who may choose to brave the Houses. Now, Lord Campbell is too good a lawyer not to feel the inconvenience of this dilemma in which the Houses are placed; and, accordingly, he brought in a bill for what he called remedying the evil, and supplying this glaring defect in the code of Privilege. But other champions of Privilege hold this proceeding of his Lordship in perfect abhorrence, and regard it as at once and for ever abandoning the whole of their claims and principles. So we shall hear no more of Lord Campbell's bill, and the argument which it was designed to meet must remain unanswered, as it is unanswerable.

Party politics are wholly foreign to this discussion. Both parties have sinned—both have suffered; yet the Whigs of former times could boast that Privilege was asserted by them in furtherance of popular rights—defying and resisting an unconstitutional system attempted by the Crown. Their denunciation and persecution of the Abhorrers, of James Duke of York, of the Earl of Danby, had this redeeming quality. If they could not always maintain the precise issues which they raised, their cause was the cause of liberty and justice. Since the Revolution, when their efforts were crowned by securing the dominion of the laws, and the independence of the judges, they opposed, with all their might, the imprisonment of Colepeper and of Paty; and the monstrous career of iniquity recorded under the title of Ashby *v.* White. With all the powers of argument, eloquence, and sarcasm, they exposed the proceedings by which Wilkes was hunted down. The only exception to this praise, is the ungenerous vote which consigned the two Judges to Newgate for having faithfully discharged their duty.

Considering the part which this Journal has taken during so many years in the discussion of public affairs, we have not felt ourselves justified in being silent when we have seen a great change introduced, which we believe to be most unfavourable to our free institutions, and to the general interests of liberty. Nor could we hesitate as to the part which we ought to take. Much might be added to what we have now advanced—many of our materials might be placed in different lights. But we were not idle

when the first ground for alarm was given; nor can we slumber now, when it has threatened a new and more practical danger.

Sincerely believing that the moderation and good sense which now regulate public affairs have been diverted by particular circumstances from giving due weight to these important considerations, we trust that they will not be lost on our leading public men. Our earnest and sincere remonstrance would not have been thus urged, had we not been actuated by this conviction. If we had been required to state the worst consequences which the unlimited claim of Privilege could produce, we should have been disposed to say,—'It may even interpose to 'obstruct the free course of justice, and the due execution of the 'laws.' This consequence has ensued, but in a moment of haste and inflammation. Without any stretch of imagination, it may be multiplied indefinitely, and be found in a short time actively interfering with all the interests of every class. We do not, however, rest our argument on any examples—we rest on the general principle. M. Guizot does not warn against slavery by a specification of the calamities and crimes which it may engender; but denounces it in the general as *ce mal des maux, cette iniquité des iniquités*. So say we of Arbitrary Power, in all its forms, and under all its disguises.

ART. II.—1. *Othello, Tragédie de Shakspeare; traduit par le Comte Alfred de Vigny.* (*Œuvres complètes*, Vol. VI. Paris.)
2. *Hamlet, Tragédie de Shakspeare; traduit par M. Léon de Wailly.* (MS. Paris.)
3. *Jules César, Tragédie de Shakspeare; traduit par M. Auguste Barbier.* (MS. Paris.)

THOSE who were in Paris last winter, will not easily forget the sensation produced there by the representation of English Tragedy by English Actors. The Theatre presented a curious spectacle.

On the night on which we were present the House was crowded. At least half the audience held books in their hands, between which and the stage they managed to divide their attention. Some were incessantly occupied in interpreting what was going on to their less learned neighbours. Many appeared resolutely absorbed, and one might discern a considerable anxiety to look as if they understood all that passed, and to be moved by pity or by terror in the right place. Some, on the contrary,

looked honestly vacant, and not a few, deeply and sincerely interested. In the front of the pit sat the Critics, triumphantly conscious of English, and boldly enthusiastic for Macready, or *passionés* for Miss Faucit. The boxes were lined with rows of the *blanches épaules*, long locks, and impassive countenances, which marked the countrywomen of the mighty poet—here and there among them, a creature such as furnished the materials out of which his boundless imagination fashioned his Desdemonas and his Portias, or suggested that type of an undemonstrative Englishwoman, Cordelia.

How often were we borne away even from the interest of the drama to that of this stranger spectacle! The mere sound of the language of England in that unaccustomed place, was sweet and solemn to our ears as the voice of a mother long unheard on earth. And this was France! and these were Frenchmen, listening, with us, to *our* Shakspeare! How vainly we tried to guess at their emotions! How vainly, thought we, would they seek to fathom ours! So near, and yet so far—united, yet severed by an impassable gulf, we sat. So infinite a region is the human heart! Nations, like individuals, know each other but in part; they cannot penetrate the labyrinths of each other's thoughts. One might think this so obvious reflection should teach diffidence in our own judgments, and indulgence for those of others. But does it?

The degree to which the Germans understand Shakspeare is one proof of our consanguinity;—of that fundamental resemblance or sympathy between men of the same race, which lies hidden beneath many superficial differences. But no foreigner can ever fully understand Shakspeare, the most English, although the most cosmopolitan of poets; and we feel—with regret or with exultation, according as the benevolent or the selfish feelings predominate—how many exquisite touches, to which our hearts vibrate in their inmost depths, our neighbours can never feel; how many allusions that stir whole trains of thought in our minds, are unmeaning to them. Enough, however, remains to form a treasury for the world; and it was with the sincerest satisfaction that we saw the French people claiming their part in the great inheritance.

Any inclination we might have felt to smile at the little indications of the zeal of our neighbours not to be behind in the race of fashion, was lost in the satisfaction and respect with which such a fashion inspired us. Here was a public homage to a long-contested superiority; a public renunciation of a long-cherished error; a public expression of the desire to know and to admire what others deemed admirable. Ungenerous must be

the heart that did not long to open to those eager and apprehensive minds, the fountains of delight at which ourselves have been wont to drink.

It is worth while to enquire by what steps the public of Paris has been led to recognise merits it had been so studiously taught to deny; or how so strong a curiosity has been awakened about those *farces monstreuses!*—so they were described—for ages regarded as the fit amusement of a barbarous people. We propose to give our readers a slight sketch of the most remarkable and successful attempts which have been made during the last twenty years to bring France acquainted with our great dramatist. It is not only a curious piece of literary and dramatic history, but it forms a part of the great struggle between the cosmopolitan and the exclusively national spirit. The incidents of the conflict are, we are sure, new to most of our readers, and will, we hope, be not uninteresting to many of them.

In such an attack on long-cherished prejudices, the pioneers are, as might be expected, the translators. It is, therefore, with their labours that we have now to do.

In speaking of the translators of Shakspeare, we shall not be supposed to mean his disfigurers. The greatest obstacle to the success of the former may indeed be looked for in the works of the latter. The French public, rarely unwilling to take upon trust, rather than study a people or literature in itself, had received with blind confidence the wretched *travesties* which bad faith or bad taste, or both united, had put before them as the works of the great English dramatist. They knew the Shakspeare of Ducis, and, naturally enough, they wanted to know no more. Even Talma, who had studied 'Hamlet' in England, had played in it with Kemble, and whose most ardent desire it was to lay a faithful copy of the conception of the Poet before his countrymen, was condemned to act in the miserable counterfeits then palmed upon the public as the tragedies of Shakspeare. Probably this state of things would have continued much longer, had not the daring, vigorous, and refined criticism of Schlegel, whose name had a certain currency and weight in France, and the enthusiastic admiration with which Shakspeare was received by the whole German people, awakened in the better order of French minds, doubts of the infallibility of their oracles. 'Voltaire,' says Monsieur Guizot, in his charming *Life* of Shakspeare, 'was the first in France who spoke of the genius of 'Shakspeare; and, though he treated him as a barbarian, the 'public thought he said too much about him. It would have 'been deemed a sort of profanation to apply to rude and form-

'less works the words genius and glory. Now the glory and 'the genius of Shakspeare are no longer discussed. Nobody 'contests them; a greater question has arisen, viz.—Whether 'the dramatic system of Shakspeare is not better than that of 'Voltaire?'

M. Guizot's Essay was published in 1821, and doubtless contributed not a little to prepare the way for what was to come. It is curious and interesting to see how the candid, accurate, and conscientious appreciation of other conditions of moral and political life than those under which he lives,—which is perhaps the most remarkable, though far from the most popular quality of the great statesman,—displays itself in the remarks of the critic. The historical sense, (*historische sinn*) as the Germans call it, shines like a light through the whole Essay. And this sense renders the mind apt for the reception and appreciation of all high and great manifestations of human thought, however new and unfamiliar.

But let us return to the conscientious translators of Shakspeare, —to the men who have devoted so much ability and labour to an enterprise in which even success promised so little recompense.

The dramatic revolution of Paris was anterior to the revolution of July. In 1828, M. Victor Hugo puplished his drama of *Cromwell*. The work was itself a protest against the constraints imposed on the French drama; and the preface contains an eloquent, though somewhat affected and fantastic plea in favour of innovation. This preface excited much and vehement discussion.

But the most active leader of the *émeute* against the *ancien régime* of the stage, was, strange to say, Count Alfred de Vigny: instead of trusting to his own forces, he brought the might of Shakspeare himself to bear upon the contest. In the introduction to the sixth volume of his *Œuvres Complétes*, containing his translations of *Othello* and the *Merchant of Venice*, published in 1839, he gives the following account of the matter:—

'It is precisely ten years since I brought the *Moor of Venice* on the French stage. Ten years! The events of that time are almost historical. Ten years! the duration of an empire and a few constitutions! The representation of this tragedy is, then, an event of sufficiently remote antiquity to permit me to speak of it as an impartial historian—a disinterested one, if ever such existed;—for when I made the Moor storm the citadel of the Théâtre Français, the flag he planted upon it bore the arms of Shakspeare, and not mine. And yet—I appeal to the witnesses who have survived that battle—if I had profaned a church the scandal would have been less.'—'It was at a time when politics seemed laid to sleep. The truce afforded by a moderate ministry left only the field of letters open to warfare. The combatants rushed to it with fury, and the pub-

lic of Paris seemed to be rehearsing, in these conflicts of the theatre, those which were shortly to follow. In October 1829, I wrote the Letter which is here prefixed to the Tragedy.'—'The Moor having once entered the citadel, threw open all its gates, and we know from those who, for the last ten years, have entered it, what new and original works were freely represented there, in spite of the superannuated power which had hitherto reigned.'—'This translation [of Shakspeare] is the only one which has ever been acted on the French stage. In the same year I prepared the *Merchant of Venice;* but I kept it in my portfolio, such as it is here printed. In the midst of the difficulties of all kinds which opposed its production on the stage, the revolution of July broke out, and the noise of our *feux d'artifice* was drowned in that of the cannon.'—'Nevertheless, as nothing is lost in France, I have full confidence that a monument like that possessed by Germany will gradually be constructed—a translation in verse, and fitted for representation, of all the works of Shakspeare. The first stone was laid with difficulty and toil in *Othello*, and it will remain where it is. I hope the stage itself will complete this work. Several of the masterpieces of Shakspeare have long been ready among us, translated into verse, and prepared by poets who unite to their fine talents a love of art sufficiently generous to make abnegation for a time of their own celebrity. Actors who may feel themselves great enough for such immortal parts, will know where to find *Hamlet, Macbeth, King Lear, Julius Cæsar,* and *Romeo and Juliet;* and from them, I think, will come the accomplishment of an attempt then made so courageously.'

We must also quote a few words from the 'Letter to Lord '———, on the Representation of the 24th October 1829,' written at the time which follows this brief introduction, and to which M. de Vigny alludes in the foregoing passage :—

'What I had to say to the public on the 24th October 1829, was this—There is a simple question to be resolved. It is as follows—Shall the French stage be opened or not to a modern tragedy, affording: 1st, In its conception, a wide picture of life, instead of a narrow picture of the catastrophe of an intrigue: 2d, In its composition, characters (not parts;) quiet scenes without dramatic action, mingled with comic and tragic scenes: 3d, In its execution, a style familiar, comic, tragic, and sometimes epic?'

The author goes on to say, that an original or invented tragedy would not have had the requisite authority to sustain such an experiment. It was necessary to take a composition consecrated by the popular voice of ages. 'I give it, not as a model 'for our time, but as the representation of a foreign monument, 'raised in other times by the most potent hand that ever created 'for the stage.'

We cannot refuse ourselves the pleasure of quoting some of M. de Vigny's just and ingenious remarks on the two great systems of dramatic composition :—

'Consider that in the expiring system every tragedy was a catastrophe, and a *dénouement* of an action already mature at the rising of the curtain, which held by a thread, and had only to fall again. Here is the defect which strikes you, as it does all foreigners, in French tragedies;—that parsimony of scenes and developments; those factitious delays; and then all at once that hurry to conclude; mingled with the fear, perceptible throughout, of falling short of matter to fill the five acts. Far from diminishing my admiration for the men who followed that system, this consideration heightens it; for every tragedy required a prodigious address, and a host of contrivances to disguise the *misère* to which they condemned themselves.'—'It is not thus that the dramatic poet will proceed in future. In the first place, he will take in his wide grasp a long period of time, and will fill it with entire existences; he will create man, not as *species*, but as *individual*; the only means of interesting *men*. He will let his creatures live of their own life, and will only cast into their hearts those germs of passion by which great events are prepared; then, when the hour is come, and not till then, without letting us feel that his finger hastens on the event, he will show destiny entwining its victims in folds as large, as multiplied, as inextricable as those in which writhe Laocoon and his sons.'

The following passage we will not spoil by translating:—

'Il fallait, dans des vestibules qui ne menaient à rien, des personnages n'allant nulle part, parlant de peu de chose, avec des idées indécises et des paroles vagues, un peu agités par des sentimens mitigés, des passions paisibles, et arrivant ainsi à une mort gracieuse ou à un soupir faux. O vaine fantasmagorie! Ombres d'hommes dans une ombre de nature! vides royaumes! *Inania regna!*'

These remarks M. de Vigny applies to the system, and the majority of its followers, not of course to the '*magnifiques exceptions.*'

Nor are we to confound such a just recognition of the defects and *entraves* of the French drama, and such aspirations after a freer and wider poetical field, with the extravagancies of writers who fancied themselves imitators of Shakspeare, when they were outraging nature, sense, and decency.

The following passage is as just as it is amusing:—

'I think it would not be difficult to prove that the power which kept us so long in this world of convention—that the muse of this secondary tragedy, was Politeness. She alone was capable of banishing true characters as coarse; simple language as trivial; the ideality of philosophy and of the passions as extravagance; poetry as *bizarrerie*.

'Politeness, though a daughter of courts, always was, and always will be a leveller; she effaces and flattens every thing; *neither too high nor too low* is her motto. She does not hear nature, who cries from all parts to genius, in the words of Macbeth, "Come high or low."

'I do not think a foreigner can easily understand what a degree of falsehood our versifiers for the stage—I will not say poets—had reached.

To give you an example of this among a thousand—when the author wanted to say "espions," he said—

"Ces mortels dont l'état gage la vigilance."

'You must be sensible that nothing but an extreme politeness towards the corporation of spies could dictate so elegant a periphrasis.

'Other writers of talent were led into the same fault by a desire of attaining what is called harmony; seduced by the example of a great master who treated only antique subjects, where Greek and Latin phrases were suitable. Hence that style in which every word is an anachronism; in which Chinese Turks and American savages talk in every line of "Hymen and his torch."

'Would you believe, for example, you English, who know what words are spoken in the tragedies of Shakspeare, that the tragic muse of France—*Melpomène*, as she was then called—was ninety-eight years before she could bring herself to say out audibly, *un mouchoir?* The following are the steps by which she proceeded with a very amusing prudery and embarrassment.

'In the year of the Hegira 1147, which corresponds to the year of our Lord 1782, *Melpomène*, on occasion of the *hyménée* of a virtuous Turkish lady, wanted her pocket-handkerchief, and not daring to draw it out of the pocket of her hoop, took out a *billet* instead. In 1792, she again wanted this same handkerchief, at the *hyménée* of a *citoyenne* who called herself a Venetian and cousin of Desdemona, named Hédelmone, and was on the point of taking it out; but whether it was that, under the Directory, it would have been dangerous to be seen to use a handkerchief, or, &c.—in short she did not venture. In 1820, French tragedy, having now renounced her sobriquet of *Melpomène*, and borrowing from the German, had again to do with a handkerchief, on occasion of the will of a Queen of Scotland; *ma foi!* she summoned courage, took the handkerchief—itself—in her hand before the whole audience, and called it, aloud and undismayed, "*tissu*" and "*don.*" This was a great step. At last, in 1820, thanks to Shakspeare, she uttered the word—to the terror and swooning of the weak, who that day uttered cries long and loud, but to the satisfaction of the public, the great majority of whom are accustomed to call a *mouchoir*—a *mouchoir*. The word has made its *entré;* Ridiculous triumph! Will it always take us a century to introduce a real word on the stage?'

We should fill too much space were we to go on to quote M. de Vigny's interesting remarks on dramatic art in France; but we must present our readers with the following specimens of his graceful and flowing translation:—

'Othello. Son père alors m'aimait, et très souvent
M'invitait; nous parlions de ma vie, en suivant
Par année et par jour les sièges, les batailles,
Les désastres sur mer, les vastes funérailles
Où je m'étais trouvé; je parcourais les temps
De mes plus grands perils, et ces rudes instants

Adieu joie et bonheur détruits par une femme;
Adieu beaux bataillons aux panaches flottans;
Adieu guerre, adieu toi dont les jeux éclatans
Font de l'ambition une vertu sublime!
Adieu donc le coursier que la trompette anime,
Et ses hennissemens, et les bruits du tambour,
L'étendard qu'on déploie avec des cris d'amour!
Appareil, pompe, éclat, cortège de la gloire!
Et vous, nobles canons, qui tonnez la victoire,
Et qui semblez la voix formidable d'un Dieu.
Ma tâche est terminée! A tout jamais, adieu!'

That this should be the favourite passage, is very characteristic. French criticism is disarmed wherever *beaux bataillons* are in question. We must, however, confess that these magnificent lines fully justify the applause they received.

The history of the representation is curious and amusing. The first of Shakspeare's plays which M. de Vigny attempted to bring upon the French stage, was *Romeo and Juliet.* This was already in course of rehearsal, when it fell to the ground in consequence of Mademoiselle Mars' consciousness of her being unequal to the part of the heroine—'Si j'avais l'age de 'Juliette,' she said, with her matchless grace, to the translator, 'peut-être n'aurois-je pas mon talent; mais avec mon talent, je 'n'ai pas l'age de Juliette.' No other competent actress was to be found, and it was abandoned in favour of *Othello.* Mademoiselle Mars played Desdemona; Joanny, Othello; and Perrier was, as we have been told, an excellent Iago. The sensation—the conflict, it excited, was unprecedented. National, political, and literary antipathies and passions were all roused and active, and the most illustrious champions appeared in the field. The Duke de Broglie did not think it beneath his high station and higher character to take part in the contest. He wrote a long and able article on the subject in the *Revue Française.* The public mind was smarting under the wounds of Waterloo and the stings of foreign invasion. This state of morbid susceptibility was little favourable to a calm appreciation of foreign merit; and it is, perhaps, not to be wondered at that M. de Vigny was seriously accused of being a partisan of England, and of lending his talents to add to the humiliation of the arms of France, that of prostrating her literary supremacy before the idol of her most dreaded and hated foe. He received threatening letters, and was earnestly warned to desist from his anti-national undertaking. Mademoiselle Mars remarked four men who were always seated in the front of the pit, and regularly, even when the success of the piece was assured and at its height, hissed

when the curtain dropped, as a sort of national protest. One man was heard, when reading the names of the personages, to say, 'Voyez donc ces noms barbares Anglais!—*Yago, Yago* '—c'est comme le miaulement d'un chat.' Nevertheless, in spite of all opposition and all clamour, *Othello* was acted fifty or sixty times.

Translations of several other tragedies of Shakspeare were shortly after published; but as these are accessible to any reader who may be curious about them, and as none of them, except the 'Fragments of Lear' by M. Anthony Deschamps, have any conspicuous merit, we shall pass on, being in a condition to do so, to those which are not yet before the public.

Hamlet, the most difficult of all, was fitly undertaken by M. Léon de Wailly, whose very remarkable translations of Robert Burns show to what an extent he is gifted with the peculiar talents required for such a task. His translation of *Hamlet* was executed immediately after M. de Vigny's *Othello*, and preparations were already made for bringing it on the stage; when the revolution of 1830 put a stop to that, together with many other literary enterprises. From that time to this it has slept; but it is to be hoped that the admiration excited in Paris by Mr Macready's representation of *Hamlet* will have the effect of calling it forth, and that M. de Wailly will allow it to be printed.

M. de Wailly's version of the eternal and universal debate of the soul with itself, which Shakspeare has, so to say, *formulé* for all succeeding time, is, considering the perfectly opposite genius of the two languages, wonderfully close, terse, and vigorous. The weaknesses are visibly the effect of the constraints under which every French translator labours—the timorous and conventional language enjoined on French tragedy, and the fatal necessity of rhyme. In spite of these, how faithful is the passage, 'Eh! qui 'supporterait,' &c., closing with a line so French in its balanced structure, yet so faithful to the sense! Here is Hamlet's Soliloquy.

'Etre ou ne pas être; oui, voilà la question:—
Lequel vaut mieux? S'armer de résignation
Sous les traits outrageants du sort toujours contraire;
Ou bien se révolter, et, d'un coup, s'y soustraire?
Mourir,—dormir,—c'est tout;—et se dire: je puis
Mettre par un sommeil le terme à mes ennuis,
A ces mille douleurs qu'en naissant la Nature
Impose avec la chair à tout créature!—
Ce repos éternel, oh! c'est un dénouement
Auquel nous devons tous aspirer ardemment.
Mourir;—dormir;—dormir! Oui, mais rêver peut-être;—

Voilà ce qui retient; car pouvons-nous connaître
Si, dégagés enfin des entraves du corps,
Il ne vient pas de rêve en ce sommeil des morts?
C'est ce doute invincible où l'ame est asservie,
Qui fait à l'infortuné une si longue vie.
Eh! qui supporterait les coups cruels du temps,
L'affront des orgueilleux, l'oppression des grands,
Les mépris de l'amour, la justice si lente,
Les airs des gens en place et leur morgue insolente,
Le talent par les sots abreuvé de dégoût,
Lorsqu' avec un poignard on est quitté de tout?
Qui sous de tels fardeaux voudrait suer et geindre,
N'était le sentiment de quelque chose à craindre
Au-delà du trépas,—ce pays inconnu
Dont aucun voyageur jamais n'est revenu?—
C'est là ce qui nous trouble, et l'on préfère encore
Tous les maux dont on souffre à des maux qu'on ignore.
La conscience ainsi fait de nous des trembleurs;
La résolution, aux brillantes couleurs,
Pâlit devant l'œil terne et froid de la pensée;
Et plus d'une entreprise importante et sensée
S'arrête à cette image, et, détournant son cours,
Perd le nom d'action.'

We give also the death of Ophelia, which is remarkable for its graceful simplicity:—

'Penché sur le ruisseau, croît un saule, mirant
Son feuillage blanchâtre au cristal du courant.
C'est là que sur ses doigts en guirlande assortie
S'unit la paquerette au plantain, à l'ortie,
A cette longue fleur, d'un sombre violet,
Qu'en ce pays le pâtre, à qui l'impudeur plait,
Nomme d'un nom grossier; mais que nos filles sages
Appellent doigts de mort dans leurs chastes images.
Et comme elle s'avance audessus du torrent,
Pour suspendre aux rameaux son trophée odorant,
La branche qu'elle tient casse, et l'infortunée
Avec toutes ses fleurs dans l'eau tombe entraînée.
Par sa chute d'abord déployés et flottants,
Ses vêtements sur l'eau la portent quelque temps.
On eut dit, à la voir, une jeune Nayade;
Elle voguait, chantant des fragments de ballade,
Comme de son danger n'ayant pas sentiment,
Ou comme née au sein de l'humide élément.
Mais ce ne fut pas long, la pauvre enfant! Sa robe
Sous l'onde qu'elle boit par dégrés, se dérobe,
Plonge, et la fait passer des chansons et des jeux,
Au silence des morts dans un tombeau fangeux.'

We shall next notice the *Jules César* of M. Auguste Barbier. The system upon which the author of the *Iambes* has proceeded, differs from that of his friends. He has kept his eye steadily fixed on the poet rather than on the public; and is thus less embarrassed by the fetters of convention and prejudice than his fellow-labourers, and enabled to attain to a fidelity which those who wrote for the stage did not dare to aim at. Without in the least undervaluing the service which those eminent writers have rendered to literature and to France, who have endeavoured to make Shakspeare not only accessible, but acceptable to the French public, we have so much faith in his unapproached supremacy, as to think no service can be so great as that of presenting him as nearly as possible as he is, without the smallest condescension to those national prepossessions which time will best deal with.

Prefixed to M. Barbier's MS. translation is an introduction, containing his own view of his arduous task, which we are glad to be able to present to our readers.

'—Desirous of keeping as near as possible to the text, both as to the general scope and the details, I have rendered the verse by verse, and the prose by prose. Several poets of our day, who have preceded me in this career, MM. de Vigny, Léon de Wailly, and Emile Deschamps, have followed another system—they have turned the prose into verse. Perhaps this will produce a greater unity as a work of art, but I think the physiognomy of the poet is less completely preserved. There are, too, certain passages which appear to me to defy the pen the most practised in rhyme. Thus the speech of Brutus to the people is written in prose; but what prose! Its structure is so firm, so concise, so elliptical, that it renders translation into verse nearly impossible; and then the intention of the author occasionally to lower the language of one of his personages, is so clear, that his translator cannot well refuse to imitate him on that point. French verse, such as is employed by Racine in his *Plaideurs*, and such as the new poetical school has used in its drama and lyrical pieces, appeared to me to render with considerable truth the freedom of English verse, unrhymed and sometimes truncated. Voltaire, in his translation of the three first acts of *Julius Cæsar*, has attempted blank verse; but the absence of rhymes renders the harmony almost imperceptible. Rhyme is absolutely necessary to French verse; it stands in the place of the long and short of the decasyllabical English verse. For the sense, I have had recourse to all the translations yet known, and to the advice of the persons most competent in matters of translation and of English literature. I have omitted nothing. I have given the equivalent of the text in its smallest details, trying to render it word for word, and only resorting to periphrases when absolutely indispensable. Often, too often, the necessities of the verse and of the rhyme forced me to amplify. What I have added, I always added with regret; and I ask pardon for it of the shade of the immortal poet. I

have sometimes borrowed from the French language of the sixteenth century terms of expression which appeared to me more energetic and more picturesque than its present forms. In short, I armed myself at all points, "pour luter avec ce rude jouteur," as Rousseau said when he translated Tacitus. An author whom one translates is like perfect virtue; we may approach but never reach it. We do what we can; "on fait flêche de tout bois." If translations in prose are more faithful to the letter, those in verse are, in my opinion, more so to the spirit. The movement of the poetical phrase, the brilliancy of the images, the harmony of the metre, and the lyrical tone of the sentiments, seem to me better reproduced in verse than in prose. Every one, however, must use his own instrument. To one who makes verse, it is very difficult to translate a poet otherwise than into verse.

'Without pretending to decide this great question, I may hope that this new poetical study on Shakspeare may add weight to the opinion of those who support translations in verse. Above all, may it penetrate all minds, in a more lively manner, with the lofty lessons which the immortal work teaches! For the matter, Shakspeare is always excellent to know. Shakspeare is a fruit whose rind, though firm and brilliant, has some spots and stains, but whose substance is always sound, nourishing, and savoury.'

Such are the views of the translator. They are in accordance with all the great canons of his art, and are expressed with a modesty and simplicity worthy of his genius. Those who are conversant with M. Barbier's verse, and know its singular vigour, freedom, and lyrical force, will not be hard to believe that his success has been answerable to his endeavour. It will, in due time, be published; meanwhile, we present the reader with two extracts:—

'Brutus. Amis, point de serments. Si la qualité d'homme,
Notre douleur commune, et le malheur de Rome,
Ne sont pas des motifs assez puissants sur vous,
Rompez tout sur-le-champ, et que chacun de nous
Rentre dans son lit oisif, laissant la tyrannie
Veiller jusqu'au moment où dans son lot impie
Chacun de nous choira. Mais si—j'en suis certain—
Ces motifs sont de force à mettre au cœur humain
Le plus lâche, un foyer de généreuses flammes,
Et donner du courage aux plus timides femmes;
Dequel autre éperon est-il besoin, amis,
Pour nous stimuler tous à sauver le pays
Que notre propre cause? Est-il besoin de chaine
Autre que celle-ci—la parole certaine
De Romains qui jamais ne manquèrent de cœur,
Et la promesse faite à l'honneur par l'honneur,
Que l'on fera la chose ou périra? Vous, prêtres,
Vous, hommes frauduleux, et vous, débiles êtres,
Qu'on insulte et qu'on frappe impunément,—jurez;

Que toute foi suspecte aux jurements sacrés
Ait recours; mais nous, point: à notre cause pure,
A nos mâles ardeurs ne faisons point l'injure
De penser que la cause et l'accomplissement
De l'entreprise aient dû s'étayer d'un serment.
Chaque goutte de sang de tout enfant de Rome
Dégénère, et révèle un vil batard en l'homme
Qui viole un seul mot de ce qu'il a promis.'

We beg our readers to compare this, line by line, with the original. Those who never tried to turn a masterpiece of one language into another, will perhaps say, this is not Shakspeare—this word is not the equivalent of that—and the like. But we will answer for it, that any one who has struggled with the difficulties of translating, will be alike struck with the beauty, and surprised by the fidelity of these lines.

The passage in which the dire exigencies of the rhyme are most cruelly felt, is, as every critic will anticipate, the commencement of Anthony's speech over the body of Cæsar. The repetition, so full of meaning, of the words 'honourable man,' is impossible. This burthen, which recurs every time with a sort of ominous and alarming force—in sound always the same, in meaning always different—is wholly inimitable. M. Barbier has carefully retained the sense, and has even been at infinite pains to introduce every time some word of the family of *honneur*. But the marvellous effect of the iteration is lost. The conclusion of the speech is very finely given. One short extract more and we have done:—

'O pardonne-le moi, sanglant monceau d'argile,
Si devant ces bouchers j'ai l'âme si tranquille!
N'es-tu pas le débris du plus noble mortel
Que le temps ait vu naître en son cours solennel?
Malheur à qui versa ton sang aux ondes pures!
Malheur! je le predis, ici, sur tes blessures,
Qui toutes entr'ouvrant leurs lèvres de rubis
Paraissent implorer le secours de mes cris.
Sur l'univers entier les fléaux vont descendre;
De ravage et de sang, de débris et de cendre,
Une guerre civile emplira la longueur
Des champs Italiens; tous les objets d'horreur
Deviendront si communs que l'on verra les mères
Sourire au vol brillant des lames meurtrières,
Au bruit du fer coupant leurs enfants par moitié.
L'habitude du crime éteindra la pitié.
Et ton âme, ô César, pour la vengeance errante,
Traînant Até près d'elle, Até toujours brûlante,
Des chaleurs de l'enfer, sur le vieux sol Romain
Criera partout, Carnage! et laissera sans frein

Aboyer et bondir les dogues de la guerre,
Jusqu'à ce que l'horreur de la fin sanguinaire
S'exhale aux cieux avec les miasmes infernaux
Des cadavres humains demandant des tombeaux.'

With the exception of one or two slight defects, which it is easy to point out, but very hard to alter, this is a faithful and powerful translation, in very noble French verse—a merit to which English readers cannot be supposed to be very sensible; but without which all other merits of a French poet fail to secure the favour of his countrymen. In some passages, M. Barbier has caught the cadence of Corneille with great felicity.

It is perhaps hardly fair to invite criticism to things which are still constantly undergoing revision and correction at the hands of their authors; but candid critics will bear this in mind, and competent critics will find abundant cause to admire them as they are.

The Germans have been the first to perceive that of all non-intercourse acts—of all prohibitive systems—that directed against foreign genius and intelligence is the most suicidal. With enlightened regard to their own highest interests, they give not only free admission, but an eager and solicitous welcome to all merit. They love to see how the great drama of life presents itself to the imaginations of other people; and to compare, to refine, to adopt, to incorporate. The French and English are yet far from this high liberality. 'Ourselves, and again ourselves,' is the motto of both—by both held with sufficient tenacity to retard progress and to embitter prejudice.

In this view, the translation and representation of a tragedy of Shakspeare in Paris, is an event important to humanity; and in this view, we have thought it a sort of duty to ask for a more open-minded and generous sympathy in its success. The success was, it is true, incomplete, and led apparently to no lasting results. 'It was fiercely disputed between friends and enemies,' says the clever author of the *Galérie des Contémporaires Illustres;* 'the public, properly so called, remained neutral and im-'partial.' We doubt, indeed, whether any skill of the translator will ever render Shakspeare palatable to the mass of Paris play-goers. The tastes of the French people are eminently exclusive and timorous. They recoil with a mixture of alarm and contempt from any thing new and unaccustomed;—forming in this respect the most perfect contrast to the audiences of Germany. It is, therefore, probable, that neither the genius of Shakspeare, nor the poetic and dramatic talent of Schiller or of Goethe, will ever secure them a place on the French stage. Indeed this is hardly to be expected, from a nation whose tastes have been formed, like

those of France and England, by ages of literary glory. The free spirit of Germany arose from the youth of her literature. 'The world was all before her where to choose.' All that is to be demanded or perhaps desired of us veterans is, a candid and intelligent appreciation of various modes of greatness; admiration for forms of beauty not consecrated among us by usage; and minds and hearts open to all the influences of genius.

The reception given to the English drama and to English actors in 1845, contrasted with that they experienced in 1821, affords a striking and consolatory proof of the progress of the public mind of France, in this generous and enlightened direction. Let not the pioneers in so worthy an enterprise as that of battering down national prejudice have to say, that they have nothing to expect from England but self-complacent indifference. Whatever may be said of French *legèreté* and conceit, we must affirm that the spirit in which the distinguished poets, whose endeavours to interpret Shakspeare we have attempted to make known, have laboured, is the very furthest removed from such selfish indisposition. They undertook a most arduous and ungrateful task, with a full sense of its insuperable difficulties, and of the small amount of fame or reward, which attended it. They were penetrated with reverence for the sublime genius they sought to interpret to their country, and with a feeling of the high nature of the service to which they were devoting themselves. They were fully sensible to the insufficiency of the means at their command; and they now speak of the result of their labours with something more than diffidence,—with the sort of despair that assails a translator when looking up to an unattainable original.

A few more such generous efforts, generously hailed, and we may be spared the humiliating spectacle of science, letters, and art bowing before senseless clamour;—of nations shutting their eyes to light, closing their ears to truth and knowledge, and refusing to listen to the voice of melody, if transmitted across a frontier line, or a few leagues of salt water!

ART. III.—*Debate on Lord John Russell's Resolutions on the State of the Labouring Classes in the House of Commons, 26th and 28th May* 1845. (Hansard's Parliamentary Debates, Vol. LXXX.)

ONE of the most marked characteristics of the present time is the large amount of public attention which is given to the working classes. Up to a comparatively recent period, the Houses of Parliament, and the political writers in the newspapers, were almost exclusively occupied with questions relating to foreign policy, finance, Indian and Colonial government, Parliamentary reform, religious toleration, and other similar matters; generally involving the conduct and permanence of the existing administration. All measures concerning the state of the working classes and the poor were avoided by the Ministers of the Crown, and studiously left to the care of country gentlemen; who, when any grievance became prominent, voluntarily undertook the trouble of devising some palliative, and of carrying the measure through Parliament. The legislation relating to this class of subjects thus consisted of detached and limited measures, not proposed on the responsibility of the government; the consent of Parliament was generally obtained by arrangement, with little or no debating; and the attention of the press, and the public at large, was in consequence but slightly attracted to the proceedings. But, after about thirty years' operation of the form of poor-law which was introduced at the end of the last century, the state of things which it produced became intolerable, and *some* change was seen to be absolutely necessary. The amount of the poor-rates, large as it was, formed only a small part of the mischief. The irritation between the agricultural labourers and the farmers, through a large part of the south, east, and centre of England—springing directly from the poor-law, and showing itself in incendiarism and riot—was such, in 1830–1, as to demand a remedy from the legislature. This remedy was applied with a vigorous hand by the administration of Lord Grey. The reform was made at a time when the mind of the public was familiarized with the contemplation of extensive and organic changes; and after a careful inquiry, and a most able and elaborate Report by Commissioners, the consent of Parliament was given in one session to the poor-law revolution—if we may so term it—which was effected by the Act of 1834.

But it could not be expected that a fundamental change in the administration of the poor-law—a law affecting the relations of employers and labourers throughout England, and involving an expenditure of five or six millions a-year—could take place, without a serious struggle either in Parliament, or out of it. Under the conviction of the necessity of an effective cure for a deep-seated malady, Parliament passed the Poor-law Amendment Act within the session in which it was first proposed; and the measure, though fully discussed, and altered in various material points, met with no serious opposition. The resistance was reserved for the time when the law came to be practically enforced. Parliament had done all that it could safely do; it had created boards of guardians, and given authority for forming unions of parishes, and building union work-houses; and without attempting to prescribe details, it had left the control of this local system, and the definition of the limits of in-door and out-door relief, to a central commission. On the Poor-law Commissioners, therefore, was imposed the task of giving effect to the general views of Parliament; of adapting the new law to the wants and condition of the people; and of ascertaining by experience, what was the precise frontier line which it was prudent and humane to draw around the hitherto boundless province of out-door relief. They had, moreover, to reconcile with their new powers, the feeling of local and municipal authority; as well as the fear of Parliament, lest the subordinate body which it had created should escape from the control of its superior. The result of these various causes, combined with some other circumstances to which we need not now advert, was, that since the time when the operations of the Poor-law Commission began to make themselves felt, the subject of the poor-law has, in one form or another, been repeatedly under the consideration of Parliament. The changes of the law which had been made in 1834, likewise necessitated some further legislation; and after numerous debates and discussions, continued throughout more than one session, the second Poor-law Amendment Act was passed in 1844. The existence of a central control over the local authorities, likewise invests the Queen's Government with a certain responsibility for the administration of the poor-law. Formerly, if an overseer maltreated the poor, the slow, expensive, and uncertain process of an indictment might be resorted to; but no one thought of looking to a minister for redress. Now, if a work-house master, or a relieving officer, is guilty of any neglect or misconduct, the Secretary of State for the Home department is called upon for explanation in his place in the House of Commons. Any question of insufficient relief, or of neglect of the poor, which formerly would not have risen above

the dignity of a parochial dispute, can now be made the subject of a correspondence with the Poor-law Commissioners; the papers may be moved for, and authentic materials are thus furnished for discussion, both in and out of Parliament. If any body will examine a volume of Parliamentary debates for any year anterior to 1834, he will remark a total absence of discussion upon individual cases of paupers and poor-law officers. Whatever may be said against the Poor-law Commission, by those who condemn Centralization, they must admit that its existence has enormously increased the practical and efficient responsibility of the local authorities; and the amount of control which Parliament exercises over the administration of the poor-law. If Parliament was jealous of the powers of the Poor-law Commissioners, who were acting in the utmost publicity, and under its very eyes, it had far more reason to be jealous of the powers exercised by the magistrates and overseers under the unreformed system; who acted in entire independence, not only of all detailed Parliamentary control, but even of the statutes which Parliament had passed for their guidance. Lastly, among the circumstances which have contributed, since 1834, to draw increased attention to the state of the poor, we ought not to overlook the annual Reports of the Poor-law Commissioners, which they are required by law to make, and which contain a large collection of authentic information, in an accessible and convenient form, such as was never before presented to Parliament. Besides these, there are the Reports of inquiries, made by the same Commissioners, upon various subjects connected with their proper duties—on pauper education, on the employment of women and children in agriculture, on local taxation, and the important investigation on the Sanitary state of the working classes. This last inquiry has given rise to a separate commission on the Health of Towns, which has made an elaborate Report, and whose labours seem likely to produce a permanent work of legislation on this difficult and interesting subject.

As connected with the general question of the poor-laws, we may mention that the administration of medical relief in England underwent a detailed and searching examination, by a Select Committee of the House of Commons, presided over by Lord Ashley, in the session of 1844. An extensive measure, amending the law relative to pauper lunatics, was likewise proposed and carried by the same philanthropic nobleman during last session.

A bill for amending the law relating to the settlement of the poor—the importance of which, as affecting the lot of the agricultural labourer, was recognised by Lord John Russell in his Resolutions of last May—was introduced by Sir James Graham, during last session; and will probably lead to a consolidation and

review of this branch of the poor-laws. The same minister, also, held out hopes of proposing a simplification of the numerous and complicated enactments which regulate the local rates and taxes of England.

The labour of children and adults in factories has likewise, since the issue of a Commission of Inquiry in 1832, formed an almost annual subject of discussion in Parliament; and indeed, in 1844, the fate of the Ministry was, for a short time, dependent on the decision of the House of Commons upon a Ten-Hours Bill. The state of the handloom weavers was fully investigated and discussed by a Commission, who reported in 1841, and who likewise considered the subject of combinations of workmen. The condition of the workers in collieries was made the subject of an official inquiry and report in 1842, which led to a legislative regulation of this branch of labour. There have been likewise, subsequently, inquiries by special commissioners into the state of the colliery workers in Staffordshire, and of the frame-work knitters in the midland counties; and the truck system was examined by a select committee of the House of Commons in 1843. With regard specially to South Wales, the state of the working classes, and the operation of the poor-laws, were among the subjects investigated by the commissioners who, in 1843-4, inquired into the causes of the 'Rebecca' disturbances in that part of the country.

The disheartening subject of Irish poverty was investigated by a Commission, which reported in 1836, and a measure for an Irish poor-law was afterwards introduced into Parliament by Lord John Russell, which received the royal assent in 1838. Under this law, Ireland has been divided into one hundred and thirty poor-law unions; an expenditure for workhouses exceeding a million sterling has taken place; and relief is now administered by Boards of guardians over the entire country. The relation of landlord and tenant, with the various incidental questions of tenant right, clearing of estates, agrarian outrage, and other matters, have been subjected to an elaborate inquiry by the recent Commission, of which Lord Devon was the chairman.

Our own part of Great Britain has likewise shared in the general revision of the laws relating to the poor. A Commission of Inquiry into the poor-law of Scotland was issued by Sir Robert Peel's government in 1842. Their Report, accompanied by voluminous evidence, was presented in 1844; and, in last session, an Act for amending the laws relating to the relief of the Scottish poor received the royal assent. This Act creates a Board of supervision for the Scottish poor-law, who are to exercise a

general control over its administration, and who, in addition to their other duties, are required to make an annual Report of their proceedings to one of the Secretaries of State; which Report is to be laid before Parliament, and is to contain a full statement as to the condition and management of the poor throughout Scotland, and the funds raised for their relief.

In the foregoing remarks, we have confined ourselves to measures directly affecting the physical condition of the working classes, and have omitted all mention of the steps which have been taken for promoting popular education; although the latter *must* necessarily exercise an important influence upon their habits and economical state.

The summary enumeration which we have above made proves at least, that whatever reproaches may be cast on the legislature of this country for the sufferings of the more indigent classes, it cannot be justly accused of having treated them with indifference or neglect. Its errors, if errors there have been, have not arisen from any reluctance to probe the wounds which are alleged to exist in this part of our social system. No other nation ever set to work with a more single-minded resolution, or a humanity more regardless of consequences, to discover and lay bare all its own defects and weaknesses. An incidental effect of these unsparing self-exposures, doubtless, has been the diffusion in foreign countries of utterly false and exaggerated notions respecting the state of the poorer classes amongst us. It is, we believe, generally thought on the Continent, even by persons well informed on other matters, that the English nation is divided into two portions—one consisting of enormously wealthy aristocrats and manufacturers, who are gorged with the spoils of their wretched serfs and operatives—the other, being the bulk of the community, who, by means of incessant toil, scarcely drive off want; numbers of whom are perpetually dying of starvation, and live in dwellings scarcely superior to the wigwams of savages. Such is the jealousy of England generally prevalent on the Continent, that every testimony against its prosperity which comes from an English source, is greedily seized upon by the editors of newspapers,—reprinted by them with appropriate comments, and readily swallowed by the public; and thus not only the authentic facts disclosed in official reports, but the unscrupulous exaggerations of partisans, obtain implicit belief; and tend to foster an impression that England is constantly on the verge of a social revolution—that her power reposes on an unsound basis—and that the whole system will crumble to pieces at the first severe shock from without. That much indigence exists in England, though ample provision is made by law for its relief, is unfortunately

true; but it is to be regretted that the people of the Continent should not be more generally aware, that, instead of there being nothing in England but excessive riches and abject poverty, the really characteristic feature of English society is the extent, wealth, power, intelligence, and independence of the MIDDLE CLASSES. Not only is it not true, as is imagined, that England is characterised by the *entire absence* of a middle class—its true characteristic is the *importance* of this class. The mistake is the same as if any one were to say that the Greeks were a celebrated people, but that they did nothing for the arts and sciences — or that the Romans were a great nation, but that they did not understand war and government. The distinctive attribute is not merely obscured or omitted, but denied. No error upon so important a subject can, when generally diffused, be innocuous. Any thing which diminishes a confidence in the stability of England—which is at present the chief guarantee for the peace of the world—tends to raise the hopes of the friends of confusion; and those Englishmen who, by their reckless declamations, circulate through the world false notions of the infirmities of their own country, not only do the utmost that in them lies to undermine the strength of England, but also to endanger the tranquillity of Europe. Fortunately the increased facilities for travelling, and the evidences of the wealth and power of England which every where abound, tend to counteract this mistaken belief; but the error to which we allude, prevails to a much greater extent than those who have not inquired into the state of opinions on the Continent are at all aware.

It is not our intention to enter into any examination of the details of the legislative measures which we have above enumerated; or to attempt to compare their practical operation with the expectations which, before they were passed, had been formed of their probable effects. Our object is more general, but less extensive. Every body who occupies himself with such matters, must have observed the wide discordance of opinions which exists whenever any subject relating to the condition of the working classes comes to be discussed. Scarcely any common principle or canon of legislation appears to be recognised. That which one party proposes as a humane and effective measure, the other condemns not only as utterly inefficient and illusory, but as an unheard-of outrage to Christian feelings. Laws which seem to afford protection, relief, and support to the poor—which clothe the naked, feed the hungry, shelter the houseless, furnish medical aid to the sick, provide for fatherless children

and widows, and which their supporters, in all sincerity, believe to be full of the spirit of charity—are denounced in terms which would be harsh if applied to the atrocities of Marat, of Danton, and of Robespierre, at the sharpest agonies of the Reign of Terror. Interferences with the freedom of labour and capital, which one party consider as fraught with ruin to the prosperity of the country, are regarded by the other as ranking amongst the first duties of a Christian and humane legislature. On most subjects the divergence of opinion between opposite political parties is rather one of *degree* than *principle*. But with respect to legislation for the working classes, there is a thorough anarchy of opinion;—maxims, which some people regard as forming the very corner-stone of the existing order of society, are by others utterly repudiated, as fit only for savages and heathens. It seems, indeed, at times, as if nothing but a proximate view of utter destruction prevents the public from declaring itself in favour of trying what would be the practical results of that compound which has been formed out of the doctrines of the Catholic Church of the middle ages, and the principles of the modern Communists and Socialists, and which several recent writers and speakers, of more talent than reflection, are incessantly occupied with promulgating. Our wish is to ascertain whether it is possible to reduce this discrepancy of opinion within narrower limits, and to find some principles, even if they be few, on which there may be a more general agreement; or, at all events, to inquire into the causes of the difference, and to point out what are the most prominent dangers of the navigation, if it is impossible that the ship should be provided with a rudder and a compass. Those who have followed the recent discussions on the state of the working classes, both in and out of Parliament, must feel, that in proportion to the amount of industry, energy, and talent expended, scarcely any discussions ever tended less to the elucidation of the question discussed. This waste of valuable time and labour is, however, inevitable, so long as people debate a practical question without being agreed in any common principle;—who try all that has been done, and all that it is proposed to do, by different standards of goodness. Reasoners ought never to forget the old logical maxim, *contra principia negantem non est disputandum.*

The most superficial observer of society is struck with the inequality of human conditions. Laws may be made equal, but nothing can equalize the natural powers and faculties of mankind. The capacity for acquiring rights may be the same, but

the rights acquired will always be different. The talent which one man leaves in the napkin, another doubles, and a third multiplies it a hundredfold. The progress of civilization has moved, and moves steadily onwards, to equalize the legal rights of the members of the same political community. In this respect, the doctrines of the soundest speculators on government receive a practical application. But the opinions of that smaller set of theorizers, who would wish to establish an equality of conditions, as well as of rights—of enjoyment, as well as legal capacity to enjoy—who seek to extinguish the principle of competition, and to limit as far as possible the principle of separate appropriation; —these opinions have hitherto remained within the domains of Utopia. No large community has hitherto attempted to form any social system which is not founded on the right of individual property; and which does not permit the transfer of acquired wealth by gift, sale, and inheritance. Consequently, no large community, however democratic its institutions, has attempted to undermine the operation of those causes out of which the distinction between *rich* and *poor* necessarily arises.

When we turn our eyes back upon the past, we find that, even in the most enlightened and polished nations of antiquity, the mass of the people were slaves—destitute of civil rights, doomed to perpetual toil, and subjected to every species of physical privation. Such, too, is the state of a large part of mankind at present, in all but the countries of Western Europe. In these countries, the slave-class has, by slow and gradual changes, emerged into personal freedom. In France, Italy, Spain, the British Isles, and most parts of Germany, the entire community consists of freemen. Here, whatever may be the physical condition of a common labourer or artizan, whatever he may actually possess, his right, in the eye of the law, to acquire and enjoy wealth is equal to that of the richest and most powerful. It is the *personal freedom of the working classes* which is the characteristic mark of modern civilized societies; and in the consequences of this state of things, whether for good or for evil, the solution of the problem now before us is to be found. Let us therefore consider how much the change from slavery to freedom has contributed, and will probably contribute hereafter, to the improvement of the great body of the people.

The most perfect form of slavery is when a slave is a mere chattel or domestic animal; who can be compelled by his master to perform any sort or amount of labour, and can be beaten, tortured, or killed by him with impunity; who can be sold or pawned by him without restraint; who can acquire no property, and contract no lawful marriage; who cannot sue or be sued, or

even be heard as a witness in a court of justice; and who cannot choose his own religion.*

But between this state and that of the perfect freeman, there may be a multitude of stages. Pure slavery usually passes into freedom by a series of insensible degrees. The mere chattel-slave receives protection from the law in certain respects, and rises to a semi-servile condition;—such as villenage or serfage,† or what was called *apprenticeship* in our West Indian legislation of 1833. When promoted to this modified state of servitude, a person cannot be punished without stint, or be killed by his master at pleasure; he cannot in general be sold, except in connexion with the estate on which he resides; he can contract a legal marriage, and beget legitimate children; he can acquire property, subject to certain restrictions, and deal with it by sale, gift, or bequest. He has certain limited rights of sueing; his testimony can at least be received by a court of justice; and he is at liberty to choose his own religious profession. The first mitigations of the pure idea of slavery are analogous to the law for suppressing cruelty to animals. No rights are conferred on the slave himself, but the rights of his master over him are limited. The government puts itself in the place of the master, and controls his powers. In tracing the gradual advances from slavery to freedom, whether in the Roman empire, in the European states of the middle ages, or among the negro slaves of modern nations, the same process may be universally remarked. Public opinion pronounces itself in favour of certain mitigations of the strict and theoretical rights of the slave-master. The government then steps in, and first curtails his powers; afterwards recognises in the slave a capacity for certain rights; and at last, after successively augmenting the number of rights possessed by the slave, extinguishes every claim upon him which his master could not enforce against a free citizen.‡

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* With regard to the last point, the rule generally adopted in modern times has been, that the *slave follows the religion of his master.* The *Code Noir*, however, takes away all discretion from the master, and requires that the slave shall be a Catholic. 'Tous les esclaves qui seront dans nos îles seront baptisés et instruits dans la religion Catholique, apostolique, et Romaine.'—Art. 2.

† See the article *Leibeigenschaft*, in the *Conversations Lexicon*—and in Rotteck's and Welcker's *Staats Lexicon*, Vol. ix. p. 671—for a detailed account of the rules respecting villenage in Germany.

‡ See the work of Biot, *De l'Abolition de l'Esclavage Ancien en Occident.* Paris, 1840.

All the limitations of the master's power over the slave have been founded on a humane motive, and have been intended for the protection of the weaker party. The Christian church used its influence for promoting emancipation; and except in rare cases,* the courts of justice, desirous of preventing wrong, always presumed in favour of liberty, and against slavery. That an unchecked power in the master of dealing with his servant, should lead to systematic and frightful abuse, is inevitable. The only motive by which he can urge his servant to labour, is the fear of corporal punishment: consequently the *flagrum*, the knout, or the cart-whip, is in constant use. So desirous were the Roman slaves of escaping by flight from the tyranny of their masters, that it became necessary to confine them during their work in subterranean dungeons: it seems likewise to have been the ordinary practice for the slaves employed in field labour to work in chains.† The Roman law contained a whole series of provisions respecting runaway slaves, and their recapture. These facts prove constant and severe oppression. In these times, slaves are not actually worked in chains: but the internal slave-trade of the United States renders a similar precaution necessary during their transit. The gangs of slaves who are exported from Virginia and Maryland to the more southern states, are, on their march, chained in couples, in order to prevent their escape. Likewise, if the power of the master is uncontrolled, there is nothing to prevent him, if it should be his interest to do so, from tasking the slave beyond his powers, or in employing him in unwholesome occupations. The slaves in the sugar plantations of Louisiana are said to be so overworked, that, on an average, they do not live under the labour for more than seven years. Generally, it cannot be doubted that where the master's power to inflict corporal punishment has been legally or practically unchecked, the condition of the slave class has been one of severe

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* In some parts of Germany, the legal maxim prevailed, *Die luft macht eigen* (the air makes *villein;*) and if a vagrant settled in such a district, he became a serf. See Grimm, *Deutsche Rechtsalterthumer*, p. 327; and compare p. 336, on the loss of freedom by *implication*.

† See Blair on the state of slavery amongst the Romans, p. 109. The farm slaves of the Romans doubtless worked in chain-gangs, under the control of an overseer, like *forçats* or convicts in modern times. Such labour must have been very unprofitable, and hence Pliny truly remarks, 'coli rura ab ergastulis pessimum est, et *quidquid agitur a desperantibus*.'—N. H. xviii. 7.

suffering. Again, the slave cannot contract a regular marriage; he has no home, no family, no domestic affections; he has neither ancestors nor descendants. Every slave-woman's chastity is at the mercy of her owner; who may either make her his own mistress, or sell her to others.* The slave is moreover housed and fed by his master, like a horse or other working animal, for the sake of his labour; whatever his labour produces is his master's, not his own; and thus all hope of improvement is denied to him. Such as he is at the beginning—the *instrumentum vocale*, the mere implement endowed with a voice—he will remain to the end of his life. As the physical condition of the slave depends merely on the will of his master, it is natural that he should sometimes suffer from want; particularly at times of scarcity, or in the case of hard-hearted and niggardly owners. Thus, before the servile war in Sicily, the slaves had been so stinted in food and clothing, that they used to go out in gangs, and plunder the country.† In modern times, the Brazilian and other slave-owners have exposed and neglected the aged and sickly slaves, who were unfit for work, and therefore yielded no profit. From these and other causes, which need not be enumerated at length, the condition of slavery has always involved great and almost hopeless suffering to the slave class; and the efforts of humanity have been directed, first towards a limitation of the rights of the master, and finally to the emancipation of the slave.

But the advantages of emancipation, and of a transition from slavery to freedom, are subject to certain drawbacks: they are purchased at the price of numerous sacrifices, and the gain, as in nearly all political and social revolutions, is far from being unalloyed. The new state of things is infinitely better than the old one; but it involves certain evils from which the other was exempt. Although the disadvantages greatly preponderate, even slavery, ill as its name may sound in our ears, is, in certain states of society, not unattended with advantages.

It has been argued that slavery, in its origin, was a humane institution; inasmuch as it generally grew out of war, and it was more merciful to keep the captives as slaves, than to put them to death, which would be the alternative amongst rude

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* The *leno* of the Roman comic poets was in truth a slave-dealer. See Terence, *Phorm.* act iii. scene 5.

† See Diod. *Fragm.* lib. xxxiv. Notwithstanding Mr Stephen's opinion, the slaves of antiquity were unquestionably treated with far less humanity than the modern colonial slaves. Boeckh's *Economy of Athens*, p. 657, ed. 2; Blair *on Roman Slavery*, c. v.

nations.* Much, however, cannot be said in favour of slavery on this score; for we know that the atrocious wars of Africa are carried on among the native tribes for the mere purpose of making prisoners in order to sell them as slaves.† Nor can much be alleged in its behalf, on the ground that it nearly dispenses with the administration of criminal law; and thus not only saves the expenses arising from prosecutions, jails, and penal colonies, but also the sufferings of the persons accused or convicted of crime.‡ For this exemption is purchased by entrusting an arbitrary power of restraint and punishment to the master, who doubtless exercises it with greater rigour and less equity than the judge in a criminal court. Whatever substantial advantages belong to slavery, as regards the slaves themselves, must be looked for on its *economical* side. The moral and domestic feelings of the slave are sacrificed, and his intellect is stunted; but in respect of his physical condition he may be a gainer. 'It is necessary' (says Aristotle, in his celebrated justification of slavery) 'that those who cannot exist separately should live 'together. He who is capable of foreseeing by his intellect, is 'naturally a master; he who is able to execute with his body

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* See an article by Naudet in the *Journal des Savans, Janv. et Fev.* 1838, on St Paul, *Constitution de l'Esclavage en Occident.* St Paul says—'Slavery is like other human institutions, neither good nor bad in itself. When it was first established as a substitute for the slaughter of captives, it was a good; *i. e.* it was better than the state of things that preceded it.'—(P. 71.) St Paul also argues that industry and wealth originally sprang from slavery.—(P. 67.) Boswell likewise, in his *Life of Johnson*, has some similar remarks with respect to the then newly proposed abolition of the slave-trade. 'To abolish a status which in all ages God has sanctioned and man has continued, would not only be robbery to an innumerable class of our fellow-subjects, but it would be extreme cruelty to the African savages, a portion of whom it saves from massacre, or intolerable bondage in their own country, and introduces into a much happier state of life; especially now when their passage to the West Indies, and their treatment there, is humanely regulated.'—(Vol. vii. p. 23; Croker's edition.) Compare Alison *on Population*, Vol. ii. p. 171.

† Sir F. Buxton (on the civilization of Africa) has collected the evidence on this subject.

‡ Penal Law seems to have been considered of so little importance among the Romans, that they scarcely noticed it in their legal *Compendia*. The *Institutes* of Justinian are confined to Civil Law, with the exception of a title at the end, *De judiciis Publicis*. Of the fifty books of the *Digest*, two only relate to penal law. The reason of this is doubtless to be found in the existence of slavery.

'what the other contrives, is naturally a slave: wherefore the 'interest of the master and slave is one.'* There is a certain degree of force in this argument, if it is limited to the economical relations of the two parties. It is the interest of the master to maintain his slave in good working order. In general, therefore, he is comparatively well fed, clothed, and lodged; his physical wants are provided for; his food descends into his mouth like the manna in the wilderness; he is clothed like the lilies of the field; he has no thought or care for the morrow. Although complaints were made of insufficient food and overwork, the arguments against negro slavery in our West India colonies were founded, mainly, on the necessity of constant punishment—on the *driving system*, as it was called—and the cruelty of the inflictions.† The Report of the French Commission, framed by the Duc de Broglie, which recommended the gradual abolition of slavery, likewise bears testimony to the excellent physical condition of the slaves in the French colonies.‡ It is on account of the advantages which may belong to dependence upon a wealthy lord, as compared with a needy independence, that the slave in Menander exclaims, that 'it is better to 'obtain a good master, than to live meanly and wretchedly as a 'freeman.'§ So the Rhetorician Libanius, who lived in the fourth century, in a declamation entitled a *Vituperation of Poverty*, after having enumerated the privations and sufferings which fall to the lot of the poor freeman, proceeds thus:—'None of these 'evils belong to slavery. The slave sleeps at his ease, being 'fed by the cares of his master, and supplied with all the other 'things needful for his body. But the poor freeman is con-'stantly awake, seeking the means of subsistence, and subjected 'to the severe dominion of want which compels him to hunger.'‖ The well-informed author of *Haji Baba* describes the astonishment of the vizier of the Shah of Persia, on hearing from the British ambassador that there is no slavery in England, and that

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* *Politics*, i. 2. In a later chapter, Aristotle adds a remark which shows how deep was the admiration of physical beauty among the Greeks. 'If,' he says, 'the bodies of some men were as superior to others as the *statues of the gods*, every body would say that the latter ought to be their slaves.'—(c. 5.)

† See Vol. lxvi. p. 515, of this Journal. ‡ P. 131.

§ Menander, (aut Philippides,) ap. Stob. Flor. tit. 62, § 7, 35. See Meineke, *Fragm. Com. Gr.*, Vol. iv. p. 274.

‖ Vol. iv. p. 983, ed. Reiske. The law of Justinian, in Cod. vii. 3, l. 15, contemplates the refusal of emancipation by slaves as a probable case.

the King is using his influence to put it down in other states. 'Indeed!' (said the vizier,) 'you surely cannot be so cruel! 'What would become of the poor slaves if they were free? 'Nothing can be happier than the lot of ours; but if they were 'abandoned to their fate, they would starve and die. They are 'our children, and form a part of our family.' *

A similar feeling is described by Mr Kohl as existing among the serfs in the Baltic provinces of Russia, with respect to their recent emancipation. The serf is now no longer *adscriptus glebæ;* but it is not difficult for his lord to find the means of detaining him on the estate if he wishes so to do. Mr Kohl continues thus:—'Though the right which the peasant has thus 'obtained is so frequently useless to him, the counter-right of 'his master, of banishing him from his native place, is very often 'turned against him. Formerly a noble could not, by any 'means, get rid of his serfs; and, whenever they were in want, he 'was forced to support and maintain them. At present, the 'moment a peasant becomes useless or burdensome, it is easy to 'dismiss him; on account of which the serfs, in some parts of the 'provinces, would not accept of the emancipation offered, and 'bitterly lamented the freedom, as it was called, which was 'forced upon them. The serf often mournfully complains that 'he has lost a father and kept a master, and his lord now often re-'fuses the little requests of his peasants, saying, "You know you 'are not my children now."' † A similar state of feeling is likewise reported to exist among the serfs of Russia Proper, who, in many cases, prefer the certainty of slavery to the risks of emancipation. Mr Featherstonhaugh, in his *Travels* in the Slave States of North America, relates that Mr Madison, the ex-President, informed him that he had once assembled all his numerous slaves, and offered to manumit them immediately; 'but they instantly 'declined it, alleging that they had been born on his estate, had 'always been provided for by him with raiment and food, in 'sickness and in health, and, if they were made free, they would 'have no home to go to, and no friend to protect and care for 'them. They preferred, therefore, to live and die as his slaves, 'who had always been a kind master to them.

Slavery excludes the principle of competition, which reduces the wages of the free labourer, increases his hours of work, and sometimes deprives him of all means of subsistence. The

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* Vol. i. p. 127.

† Kohl's *Russia*, Vol. i. ch. iii.

maintenance of slaves as one household or *familia*, likewise conduces to thrift; their supply on a large scale is, or ought to be, less expensive than when each labourer, as in a state of freedom, has a separate cottage and family of his own. With slaves thus supported, there is no more waste than with horses or cattle. There is none of the loss or damage which arises from the drunkenness and improvidence of the free labourer expending his own wages. Again, the slave-master can regulate the number of his workmen, and can in this manner control the amount of population. The means may doubtless be harsh and cruel, but they are effective for their end. In general, indeed, slave classes show a disposition to diminish rather than increase in number; and, where the slave-trade has not been prohibited, the number is kept up rather by new importation than by births. Hence the evils of an abundant population never manifested themselves while the mass of the people was in a servile and semi-servile state. Moreover, it can scarcely be doubted, that under certain circumstances industry may be promoted, and the produce of the land increased, by the existence of a slave class. Mr M'Culloch, indeed, thinks that the tropical countries can never be effectually cultivated by free labour. 'Were the slaves 'completely emancipated in the United States, Cuba, and Brazil, says he, 'it is all but certain that the culture of sugar and cotton 'would be as completely abandoned in them as in Hayti. And 'if the change were accompanied by a considerable improvement 'in the condition of the black population, the sacrifice might not, 'perhaps, be deemed too great. But where is the ground for 'supposing that such would be the case? Indeed, the fair pre-'sumption seems to be the other way. Little, at all events, 'would be gained by turning a laborious, well-fed slave, into an 'idle, improvident, and perhaps beggarly freeman.' * If we look merely to the present, and confine our views to *economical* results, Mr M'Culloch's arguments certainly appear strong. And although it is true that all hope of *future* improvement, in respect of his physical condition, is denied to the slave, yet it must be admitted, that practically, and looking to the actual generation, the absence of a power of rising in the world is no severe privation to a peasant class. Neither in England among the agricultural labourers, nor in the Continental States among the small proprietors, are there many instances of a person quitting the condition in which he is born. Nor is any slavery

* *Dict. of Commerce*, Art. *Slaves and Slave Trade*, p. 1144.

so indelible (where the slaves have the same coloured skin as their masters) as to prevent frequent emancipations of individual slaves from personal affection and other causes. The freedmen formed a numerous class among the Romans; and it is known to what important posts slaves have risen in the Turkish empire.

After these remarks, (the intention of which cannot be misunderstood by any reader of this Journal,) we can better estimate the effects of the change from slavery to personal freedom upon the emancipated slave. He is relieved from the liabilities and burdens, but he at the same time forfeits the advantages of slavery. While the slave is exonerated from his legal obligations to his master, the master is exonerated from his legal and moral obligations towards his slave; and his interest in the conservation and protection of his slave is at an end. The slave (to use the common phrase) becomes his own master. With the acquisition of this power, he incurs the obligations of self-support. He becomes independent; and, being so, he must provide for his self-defence. Self-dominion is not an unmixed good to the weak. It imports onerous duties. It implies the necessity of providing for a man's own wants, and those of his family. The freedman is no longer forced, by the fear of corporal punishment, to do a prescribed task of work. But he must work in order to earn wages; and, what is more, he must find work for himself. He is no longer incapable of acquiring property, or of reaping the fruits of his own industry. But he is, in consideration of this power, bound to provide for his own support. He is no longer incapable of contracting a lawful marriage, or begetting free legitimate children. But he is bound to maintain his wife and children by his own exertions; and if he deserts them, or allows them to starve, he is subject to legal punishment. He is no longer fed and maintained merely according to his physical wants,* without reference to the value of his services; but, on the other hand, he is delivered over to the unchecked operation of the principle of competition; and he must content himself with the scanty pittance which the rivalry of the labour market may assign him. He is no longer treated as a mere animal or implement of production, without feeling, mind, or moral character;

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* 'Les esclaves sont logés, nourris, vêtus par les maîtres; s'ils n'ont que le nécessaire, ils ont le nécessaire; s'ils vivent, ou plutôt végètent, dans la misère, ils ne sont jamais pressés par le besoin.'—*Rapport de la Commission sur l'Esclavage dans les Colonies*, (1843,) p. 87. This able Report was framed by the Duc de Broglie.

he does not follow the religion of his master, and he may voluntarily choose his own creed. But, in becoming a free moral agent, he accepts the responsibilities of that condition; his path is open to virtue, but he is answerable for his acts and their consequences if he deviates into other ways; he can, by foresight, determine his own lot, but he must, in compensation, suffer the penalties of his own improvidence.

When we contemplate the actual results of the change in question, and compare the state of the working classes in countries where they are free with the state of a slave-class, we find that the only benefits of freedom, which have been fully enjoyed by the labouring classes, are the *negative* ones, (such as exemption from bodily inflictions, and other ill treatment;) but that the *positive* benefits which they have hitherto derived from their social independence, have been less prominent. The *positive* benefits—which are economical and domestic—which consist in the acquisition, enjoyment, and transmission of wealth, and in the development of the family affections—are more remote, and depend on numerous preliminary conditions which hitherto have rarely co-existed in any community. The entire harvest of the change will not be reaped until civilization has made further progress—until the providence, industry, intelligence, and peaceableness of the working man are such as to render him altogether fit for self-support, and to protect society against the shocks arising from his delusions and violence.

But, in proportion as the positive advantages are distant, the disadvantages of the change make themselves sensibly felt. As soon as slavery has ceased to exist, the freedom of action for the working classes is complete; they are masters of their own conduct, and their conduct determines the condition of the great mass of the community. If, then, their moral state is low, and they are exempt from all legal compulsion, they are likely to make a bad use of their liberty. Whenever the moral restraints are weak, and the rights of the freeman are exercised without limitation, and with an inward consciousness of power, political or social dangers cannot be far off. A slave-class, emancipated at once, affords the strongest example of the evils arising under this influence. Their moral condition is, at the best, like that of children; they have had no experience of self-management; and the rights of freedom are, from their novelty, prized most highly. Some countries, however, from which slavery has long been banished, exhibit a nearly similar state of things. Thus, in Ireland, the freedom of the working classes has produced the smallest amount of positive advantages, combined with the largest amount of disadvantages. The peasantry are in the lowest physical de-

gradation; they derive the smallest possible quantum of happiness from their power of disposing of themselves and their families, and of acquiring property; while their rights of citizenship are too frequently perverted to purposes detrimental to themselves, and dangerous to the public peace.

When the slavery of the working classes had been gradually extinguished in Western Europe, it began to be seen that the theory of personal freedom could not be carried consistently into practical effect for the entire community. A man might, in the eye of the law, be presumed able and bound to maintain himself and his family; but want of industry, or intelligence, or providence, or the rapine of the strong, might reduce him to destitution and helplessness. Accordingly, unless many of the labouring class were to be permitted to die of hunger and neglect, it was necessary to find some means of alleviating their sufferings.

A more humane and compassionate spirit towards the weak, the indigent, and the afflicted, had at this time been diffused by Christianity; and the Church constantly inculcated the duty of relieving the poor. Hence arose the practice of voluntary alms-giving on a large scale. There had been no private alms-giving among the ancients, carried on systematically, and providing for the wants of entire classes of destitute persons. Beggars are sometimes mentioned; but their number was never great, even in the approaches of the colossal and wealthy city of Rome. The Athenians made a state provision for the needy; but it was principally intended for persons who had suffered, directly or indirectly, through the casualties of war; and it may be compared rather with Greenwich and Chelsea Hospitals, than with a general poor-law. The same people likewise at times distributed corn and money among the citizens—a policy which Aristotle condemned,—comparing it with the tub of the Danaïdes. The latter system was, however, carried to the greatest length by the Romans; who drew large supplies of corn as a tribute from their provinces, and distributed it among the populace of Rome. In this manner, the Imperial government acted the part of a commissariat to the capital of the empire; and Tacitus could truly say that the subsistence of that vast city depended on the arrival of the Egyptian or African corn fleet. This gratuitous distribution of corn was, however, an abuse of the system of provincial government, and arose out of the magnitude of the Roman dependencies: it was purchased at the cost of infinite misery to the provincials, and bears no resemblance to the charitable institutions of modern states. These

have never existed, not even in recent times, among nations in which slavery prevailed. Every master being bound to maintain his own slaves, there can be scarcely any mendicancy except among freemen. The negro slaves in St Domingo used to say, that 'it is only the white man who begs.'* Moreover, the master is not only bound by law, but impelled by his interest, to keep his slaves at home, and therefore the free alone can become vagrants. The earliest known enactment on the subject of mendicants in the Roman law, is a constitution of Gratian and Valentinian II., of the year 382 A.D., declaring that whenever an able-bodied man begs publicly, he is, if of servile condition, to become the slave of the informer; if a freeman, to become his *colonus*, or serf.† This singular law illustrates what we have said upon the inconsistency of mendicancy with slavery. The lawgiver neither punishes the mendicant, nor makes a public provision for him; but simply declares that he shall be a slave, of one sort or another. Being provided with a master, he possesses the means of subsistence. Besides which, it may be observed that if a legal maintenance for the poor existed in a state where slavery obtains, the masters would emancipate their aged and sickly slaves, and throw them upon the public for support. Foundling hospitals, lying-in hospitals, infirmaries and hospitals for the sick, asylums for orphans, were all the offspring of Christianity, and of the incipient emancipation of slaves. None of them (with the exception of a provision for orphans, originating with Trajan) dates from an earlier period than the Christian emperors.‡ The alms-giving at convents likewise became considerable in amount, after the monastic houses had been enriched by donations, and before the Reformation and other subsequent changes had deprived them of their lands.

After voluntary alms-giving, and charitable institutions maintained by private donations and endowments, the next great expedient for palliating the incidental bad consequences of the freedom of the working classes, was a *legal provision for the poor*.§ In our

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* Cited by Beckmann, *History of Inventions*, Vol. iv. p. 529.

† Cod. lib. xi. tit. 26.

‡ See Beckmann, in the articles *Foundling Hospitals, Orphan Houses*, and *Infirmaries*.—*Ib.*, Vol. iv.

§ The connexion of a poor-law with the freedom of the working classes, is pointed out by M. E. Biot, in his work on the abolition of slavery in the West:—'Remarquons ici, pour l'histoire des institutions humaines, que les secours de toute nature, accordés par le gouvernement aux classes pauvres, s'augmentent progressivement à mesure que l'esclavage décroit; comme pour prouver que l'égalité des conditions so-

own country there were several enactments to this effect during the sixteenth century; which ended in the decisive and important statute of the 43d Elizabeth, passed in 1601. Mr Hallam and other competent judges are, however, doubtless right in rejecting the theory which ascribes the English poor-law solely to the extinction of the monasteries.* This law was owing to a combination of causes—among which the suppression of the religious houses may, perhaps, be admitted;—but the principal were—1. The cessation of villenage, of which there were still some remnants in the reign of Edward VI., and even later. 2. The increase of population, and changes in the mode of cultivating the soil. 3. The prevalence of a more humane spirit among the governing classes. As has been observed, the accidental dispersion of the monasteries at irregular distances through the kingdom, was alone sufficient to prevent them from affording systematic relief to the poor, like a general poor-law. Sir F. M. Eden likewise states his belief, that the monasteries did not much trouble themselves with relieving poor that did not immediately belong to their own demesnes; and that the same sort of charity was usually practised by the great nobility on their estates; so that the poor could not have been losers by the transfer of the property into lay hands.

It is important to bear in mind the suppositions upon which a legal provision for the poor in our modern societies is founded; lest we should admit as objections to it the defects which are inherent in its very nature. All systematic relief of the poor, whether its sources be voluntary or compulsory, is an interference with the natural order of society, as resting upon the institution of property. Up to a certain point, it abrogates the temporal punishments for vice, indolence, and improvidence; it weakens the motives to exertion, frugality, self-denial, and foresight; and it moreover relieves near kindred from the duty of assisting one another. These effects are inevitable; but if the condition of the working classes be such that they *cannot* support themselves, and if they are not relieved by private alms, it becomes necessary for the state to step in, and make such a provision for the destitute as will at least avert starvation. If they were slaves, the master would be bound, or might be compelled, to support them;

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ciales n'est qu'un rêve impossible à réaliser.'—(P. 137.) See also Alison *on Population*, Vol. ii. p. 174.

* See his *Middle Ages*, Vol. iii. p. 350. n. *Constitutional History of England*, Vol. i. p. 108. Compare Barrington *on the Statutes*, 535. Sir F. M. Eden's *State of the Poor*, Vol. i. p. 95. Mr Southey concurs in this opinion, *Colloquies on Society*, Vol. i. p. 84.

being free, but without the means of subsistence, that obligation can only be assumed by the state, or, in other words, by the tax-paying part of the community. It is true, that in so doing the state departs from the theory, that the working classes, being free, are capable of maintaining themselves, if left to the ordinary motives to exertion; but the evil is an urgent one, and a remedy for it must be found. Under these circumstances, perfect consistency is impracticable; the state must consent to abandon in part the doctrine that the rights of citizenship imply the duty of self-support, and must strike a balance of inconveniences. It must strive to administer its poor-law in such a manner as never to interfere, beyond the necessity of the case, with the natural motives to industry, frugality, and the domestic duties; and studiously to avoid, so far as is possible, the creation of artificial obstacles to the future improvement of the working classes.

As a poor-law is founded on a supposition directly opposite to that on which the freedom of the working classes rests, so it imitates the characteristics of slavery, so far as the *beneficial* side of that institution is concerned. Paupers are maintained, not by wages, but by rations; by allowances reckoned according to the number of the family, and not by a payment proportioned to the value of the services rendered. A poor-law, indeed, which relieves able-bodied labourers, necessarily leads to the introduction of the principle of rations, instead of the apportionment of wages to merit, in the remuneration of labourers. So long, at least, as employers of labour are rate-payers, they will, in order to save their own purse, prefer a married to an unmarried, a settled to a non-settled, labourer; because, if the married man with a family, and the man with a settlement in their parish, is out of employment, he must be maintained at their expense.* But, in establishing a system of poor-laws, the state has not merely imitated the beneficial parts of the servile state; it has sometimes gone further, and has annexed to its bounty some of the *obligations* of that condition. Thus, the exaction of labour in return for relief, without remuneration to the pauper, has been adopted by universal consent. In all the controversies respect-

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* 'Pauperism seems to be an engine for the purpose of disconnecting each member of a family from all the others; of reducing all to the state of domesticated animals, fed, lodged, and provided for by the parish, without mutual dependence or mutual interest.'—*Report of Commissioners of Poor-Law Enquiry*, (1834,) p. 96. For *parish*, substitute *master*, and this description is exactly applicable to the condition of the slave.

ing the comparative advantages of in-door and out-door relief, which have been carried on in this country during the last ten years, it has been constantly assumed that able-bodied men, whether relieved in a work-house or out of it, should (in the words of the Act of Elizabeth) be 'set on work.' Several severe conditions, strongly savouring of the power possessed by masters over their slaves, were annexed to relief by local Acts of Parliament, passed in the last and present century: they are classified in a general repealing statute of 1816, (56 Geo. III. c. 129.) They are, 1. Power of compelling paupers to enter a work-house, and of detaining them therein, either for an indefinite period, or until the charges of their maintenance have been defrayed out of their earnings. 2. Power of hiring out persons of full age, and of taking the profit of their labour. This latter power is likewise conferred by the 22 Geo. III. c. 83, (Gilbert's Act,)—an act of general application, and still in force in a few places. The apprenticeship of pauper children has, for the most part, been little better than absolute slavery; and the degrading methods by which labourers used to be distributed among the farmers of the parish before 1834—the sales by auction in the village pound—approached very closely to the same condition. This inevitable tendency of a poor-law carried to excess, has been overlooked by those philanthropic persons who think that *forced benevolences*—that a larger and larger distribution of money raised by taxation,—is a certain road to the amelioration of the condition of the working classes. They forget the friction with which the process of compulsory donation is invariably accompanied; they do not sufficiently advert to the inevitable reaction against that generosity which A exercises, by ordering the rate-payer B to relieve the labourer C; and to the struggles which the proprietary and industrious classes will undoubtedly make, when their incomes are heavily taxed in order to provide support for those who give nothing in return. The onerous, and often degrading and vexatious conditions, which the administrators of profuse relief impose upon the acceptors of it, cannot fail to engender a feeling of irritation and hostility between the working classes and their employers; and to produce in the latter the sullen discontent of slaves—but slaves uncontrolled, and powerful for mischief. There never was a worse spirit between the farmers and agricultural labourers, in the pauperized counties of England, than that which existed when the poor-rates had reached seven millions a year, and when the relief of the able-bodied was most lavish. There is no greater delusion than to suppose that a pauperized is a contented and tranquil population. No policy is more short-sighted than that which

seeks, for the sake merely of security, to appease the complaints of the labouring classes by compulsory distributions,—raised, not like the Roman donatives of corn, from tributary provinces, but from the estates of their own employers. Some substantial relief would doubtless be afforded to the working classes of England, if the poor-rates, from which their allowances came, were paid by the inhabitants of Canada, the West Indies, and Hindostan; instead of being, as they are, levied upon every occupier of lands and houses within their own parish. The public now generally understand, that if the consumer pays more for his food, he has less to expend in the purchase of manufactures. They do not, however, appear to perceive the equally obvious truth, that if the occupier pays more in the shape of rates, he has less to expend in the payment of wages.

Another legislative measure, for the protection of the working classes against the consequences of that competition which is the result of their freedom, is the *limitation of their hours of work.* This was first done in this country with respect to labour in cotton, woollen, flax, and silk factories, by the Factory Act of 1833; and restrictions similar in character, though less in degree, were extended, by an act of last session, to cotton print-works. These regulations are particularly applicable to children, and a system of compulsory attendance at school is combined with the limitation of their hours of work. Laws for limiting the hours of work in factories, have likewise been passed in France and Prussia. The interdiction of certain *sorts* of labour to women and children, is analogous in its principle to the regulation of the *time* of work. By an Act of 1842, the labour of women and girls in coal-mines is absolutely prohibited in Great Britain, and that of boys is subjected to restrictions; in like manner, the climbing of chimneys by children has been prohibited by a recent statute. No attempt has been hitherto made to fix a legal *minimum* for the rate of wages in this country, except through the indirect medium of the poor's-rate. The Justices of the Peace, as is well known, at one time promulgated *scales* for the guidance of the overseers in giving relief, which were calculated according to the numbers of the labourer's family.

All these restrictions and regulations resemble the legislative interferences which have been made for the protection of a slave class. When the slave is completely at the mercy of his master, it is natural that he should be over-worked, or employed in unhealthy occupations, or that women and children should be set to tasks unsuited to them; and no effectual protection or remedy is in such case practicable, unless it is afforded by the state. Accordingly, the state might properly and consistently fix a

maximum number of hours of work for a slave, interdict the employment of slave women and children in certain occupations, and otherwise regulate the mode of their labour. Such interferences were made in our West India colonies, during the existence of slavery; * and similar regulations would now be highly beneficial to the over-worked negroes in the sugar plantations of Lousiana. Nor was such excessive toil unknown in antiquity, even for the domestic tasks of female slaves.† Virgil, in some touching verses, describes the thrifty Italian housewife working her slave-women during the night, at wool-spinning, in order to maintain her little children, and to preserve the honour of her marriage-bed unblemished.

> 'Quum femina primum,
> Cui tolerare colo vitam tenuique Minervâ
> Impositum, cinerem et sopitos suscitat ignes,
> Noctem addens operi; famulasque ad lumina longo
> Exercet penso, castum ut servare cubile
> Conjugis, et possit parvos educere natos.'

In like manner a *minimum* of wages is analogous to the legal enactments which might be, and have been properly established, for fixing the *minimum* amount of food and other necessaries to be allowed by a master to his slave.‡ However difficult the enforcement of such regulations, they have existed in the European colonies since the publication of the *Code Noir*. But where the workman is *free*, the law presumes that he is competent to make his own bargain respecting the nature of his occupation; the

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* Concerning the Jamaica Act limiting the hours of labour, see Stephen *on the Slavery of the British West India Colonies*, Vol. ii. p. 95. The words of this Colonial Act might serve, *mutatis mutandis*, for a clause in a Factory Act. 'Be it enacted, that every field slave on such plantation or settlement, shall on work-days be allowed, according to custom, *half an hour* for breakfast and *two hours* for dinner; and that no slave shall be compelled to any manner of field-work upon the plantation before the hour of *five* in the morning, or after the hour of *seven* at night, except during the time of crop, under the penalty of ten pounds.' *Night-work* was prohibited in some of the islands.—*Ib.*, p. 141. For the rules in the French West India Islands, see the Report cited above, p. 220.

† There were no legal regulations respecting the amount of labour, or the allowances of food, for the Roman slaves.—Blair, *ib.*, p. 93, 102.

‡ Concerning the minimum allowance of food for slaves, fixed by acts of the colonial legislatures for the Leeward Islands and the Bahamas, see Stephen, *ib.*, Vol. i. p. 465; Vol. ii. p. 289. Regulations as to clothing of slaves, *ib.*, p. 345. The legislation of the French slave colonies was very copious and explicit on this point. See the Report already cited, p. 224.

number of hours during which he is to work; and the other circumstances connected with his employment. As he obtains the benefit of the principle of competition when it is in his favour, so it follows that he must suffer the inconveniences when it is against him. All regulations therefore, with respect to hours and modes of work, such as we have just mentioned, involve a departure from the principles on which the freedom of the working classes is founded, and imply a partial return to the system of slavery. The same may be said of compulsory education; for although the children themselves may, whether free or slave, be unable to protect themselves, yet a labourer, enjoying personal freedom, ought undoubtedly to be presumed to be the fittest guardian for his own offspring. Wherever, therefore, the working classes are free, all such interferences are a sort of solecism in legislation; nevertheless, as we have said with regard to a poor-law, the state of the working classes, and the circumstances of any given community, may be such as to render these and similar restrictions expedient; as producing less evils than those which they temporarily prevent, and as affording a useful check to the uncontrolled action of competition.

This species of legislation, however, is exposed to the risk of counteracting its own benevolent purposes; for since the allowance of the free labourer cannot, as of the slave, be regulated by law, he may lose more by the diminution of his wages consequent on the interference of the legislature, than he may gain by the alleviation of his toil. 'Let the *Code Noir* of France,' says Mr Stephen, 'the *Cedulas* of the Spanish government as 'to its colonial slavery, the servile Codes of the Danish West 'India islands, and of our own, be consulted; and it will be found 'that the first, the anxious, and very difficult advance towards 'improvement in all, was to *limit the labours* and *enlarge the sub-*'*sistence* of the slaves.'* These two objects can be consistently pursued by direct legislation with respect to a slave-class; since for *slaves* it is possible to fix by law a *maximum* of labour and a *minimum* of food. But where the working classes are free, and their hours of labour are limited by law, the amount of their wages is left to be determined by the competition of the market: and if their labour is rendered less valuable, it must, before long,

* Stephen, Vol. ii. p. 340. In the Roman empire, Augustus and Antoninus Pius authorized the tribunals to interfere in certain cases for the protection of the slave. 'The sort of cruelty pointed at by both these emperors,' says Mr Blair, 'was that practised not on the mental, but on the bodily feelings of the slave; *by deficiency of food or of clothing, by over-work, or undue severity of correction.*'—*Ib.*, p. 85.

naturally command a less remuneration. Thus, by the Act abolishing slavery in 1833, the hours of labour for the negro apprentices were limited to forty-five in the week; * but at the same time the allowance of food and clothing which the master was required to make to his slave was diminished. M. Aubert-Armand, a civil officer of Martinique—who Reported to the French government on the state of Trinidad during the apprenticeship—affirms that the apprentices entreated the masters to re-establish the old hours of work, and the old allowances; and that this was done by the agreement of both parties.† The advocates of a Ten-hours bill ought, if they were prepared to pursue their policy to its legitimate consequences, to propose a *minimum* of wages; but from so impracticable an attempt they recoil.

We have thus attempted to show what are the characteristic advantages of the freedom of the working classes, and what are the incidental disadvantages with which it has been hitherto attended, in respect of their physical condition. We have likewise seen, that the palliatives for these disadvantages have all been found in a partial return to the principle of slavery. Now, we have not sought to raise a prejudice against the views and systems which we have described, by dwelling merely on the harsh side of slavery, or by stirring up the many painful associations which belong to this subject; on the contrary, we have selected evidence of its beneficial working as respects the slave himself, and have given it credit for the merely physical and economical advantages which, under certain circumstances, it undoubtedly possesses. But, having attempted thus to do justice to both sides of the question, we wish the advocates of extensive interference, by legislation, for the relief and protection of the poor, to consider that their system is nothing else than an attempt to transplant into our modern societies the beneficial part of slavery; and therefore, that, however benevolent their motive, the plan is self-contradictory and absurd. In fact, it is neither more nor less than an attempt to convert the employer of free labour into a slave-owner deprived of his whip. He is to be responsible for the physical state of his workmen, and to regulate their allowances according to their wants; but he is not to be empowered to use punishment for compelling them to work. This view re-

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* 3 and 4 Wil. IV. c. 73, § 5.

† *Rapports sur l'Abolition de l'Esclavage dans les Colonies Anglaises.* (*Quatrième publication*, p. 245.)

verses the humane precept of Cicero with respect to the treatment of slaves. He says, that they ought to be treated as *hired servants;* that labour ought to be exacted from them, but that they ought to receive a proper and fixed allowance of food, clothing, and lodging.* The modern friend of the poor teaches, on the other hand, that hired servants ought to be treated as slaves; that, in return for their work, their employer ought to furnish them with a due amount of necessaries, and be responsible for their support.

Nor is this mode of improving the condition of the working classes merely inconsistent with the principles on which their civil rights are founded; but, if carried resolutely into effect, it would infallibly bring back some of the harsher incidents of the institution which it partially imitates. It is impossible to have all the good of slavery without some of its evil. Some fragments of the severity will in practice cling to the humanity, however the law-maker may try to separate them. The labourer will never practically enjoy the animal security of the slave, without his employer attempting to obtain over him some of the rights of the slave-master. Still less will it be possible for the working classes to possess the activity, the energy, the independence, which ought to characterise the freeman, if they are kept in the tutelage of the state, and their physical condition is made to depend on causes over which they themselves exercise no control.†

The *Truck System*, if worked for the interest of the labourer, realizes the idea of the benevolent slave-owner, so far as the supply of his physical wants is concerned. He may be furnish-

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* 'Est autem infima conditio et fortuna servorum, quibus, non male præcipiunt, qui ita jubent uti, *ut mercenariis*, operam exigendam, justa præbenda.'—*De Off.*, i. 13. Compare Seneca, *De Benef.*, iii. 22—'Servus, ut placet Chrysippo, perpetuus mercenarius est.'

† Speaking of the condition of the slave, the Report of the French Commission remarks—'La loi le dispense de songer à l'avenir; pourquoi serait-il rangé, laborieux, économe? Pourquoi, pour qui, dans quel but se priverait-il de quelque chose? Quoiqu'il arrive, il n'en sera ni mieux ni plus mal.' —(P. 133.) Compare with this description of the *slave*, Dr Johnson's remark on the *habitual pauper*:—'The Bishop of St Asaph (Dr Shipley) mentioned a charitable establishment in Wales, where people were maintained, and supplied with every thing, upon the condition of their contributing the weekly produce of their labour; and he said they grew quite torpid for want of property. *Johnson:* "*They have no object for hope. Their condition cannot be better. It is rowing without a port.*"'—(Boswell's *Life of Johnson*, Vol. vii. p. 89.)

ed by his master with a well-built, airy, commodious cottage, and the rent may be stopped out of his wages. At his master's shop he may procure food, clothing, and other articles of necessity and comfort, at the wholesale prices, upon the production of a ticket. His master may besides, in consideration of a further moderate stoppage from his wages, provide him with medical attendance in sickness, and schooling for his children. It is demonstrable that if all the arrangements are made by the master on a large scale, and managed with care and frugality, the labourer will thus derive greater benefits from his wages than if they were paid in money and spent at his own discretion. Yet experience has proved that *Truck*, in practice, is in general used *against* the workman, and not *for* him;—that it is employed (particularly at times of sinking trade) as a means of reducing wages in reality, without any apparent alteration in the money-rate, and thus of eluding the effect of the combinations against reduction of wages. So oppressive has its operation upon the workmen been found, that *Truck* was prohibited by Act of Parliament in 1831, and all the most recent testimony since that time shows that its abuse is far more frequent than its use.*

The plans for improving the condition of the people by treating them as virtual slaves, and seeking to inspire their employer with the feelings of a benevolent slave-master, will all have the same result as the *Truck System*. Their success will depend on rare accidents of individual character; their failure will be produced by the prevailing dispositions of human nature, and the irresistible laws of human society. It is always to be wished that the feeling of the master to his slave should be (according to some of the testimonies which we cited above) that of a parent to his child. As the slave is helpless and without a substantive existence, it is best that his master should exercise over him the functions of a mild guardian. But such a relation is not compatible with the freedom of the working classes. The very persons whom the employer is seeking to keep in a state of adult pupilage, are perhaps combining to force him to raise their wages. The hardness which is supposed to spring out of the merely economical and pecuniary relation of employer and workman, will be found in the end to be most beneficial to the latter. Thus, in the gradual extinction of villenage, the commutation of personal services into money payments was generally beneficial to the peasant, and marked an improvement in his lot and an advance in civilization.

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* See Mr Tremenheere's *Report on the Mining Districts*, (1844,) p. 56.

From the remarks which we have made upon the principles and tendencies of the different systems for ameliorating the condition of the poor, it may, we think, be inferred, that the opinions on practical legislation for the benefit of the working classes will, after a time, become less unconnected and multifarious; and will gradually cluster round *two centres*. The anarchy of opinion which at present prevails will be diminished, and the chance of ultimate agreement increased, if the number of discordant theories and projects is rendered smaller.

One set of persons will regard the poor with the paternal care and tenderness which a benevolent master bestows upon his slaves. They will legislate for the poor as for children, as for persons in a state of pupilage, and therefore incapable of acting and providing for themselves. They will look for the amelioration of the working classes to the donations of the rich, and the care and inspection of employers; not to the providence, frugality, and intelligence of the labourer himself. Up to a certain point this system can be pursued beneficially; it relieves some present suffering without causing greater evils afterwards. But if it is carried beyond the limits of prudence, the abettors of it will discover that their policy is fundamentally wrong; they will learn by experience, that inasmuch as they cannot exercise over the free workman the authority which the parent exercises over his child, the guardian over his ward, and which even the most benevolent master exercises over his slave, the expedients to which they will be driven, in the practical working of their system, will produce incessant irritation, and a deep-seated feeling of bitterness and hostility between the richer and poorer classes; and, after great economical sacrifices for a supposed moral effect, the end in view will be more remote than ever. The friends of this short-sighted but attractive and popular policy, will therefore, unless they temper their zeal with discretion, expose themselves to the risk of falling within the description of Mr Lyell, who (speaking of the abolitionists of the United States) observes, that 'next to the positively wicked, the class who are usually called '"well-meaning persons" are the most mischievous in society.' * If the wish to do good on a large scale is not accompanied with a knowledge of the means by which it is to be accomplished—if those who set the vast machine of human society in vehement action, for purposes of social improvement, have not previously calculated the effects of the new forces which they create—how-

* *Travels*, Vol. i. p. 188.

ever genuine may be their humanity, and however ardent their sympathy with the sufferings of their fellow-creatures—yet, by this rash procedure, they incur the risk of aggravating and perpetuating the evils which they seek to eradicate; and of raising up additional obstacles to their gradual diminution by less ambitious but more practicable measures. Assuming, as they do, to represent the principle of benevolence, they must take care lest they reverse the description which Mephistophiles gives of the principle of malignity, that it is the power which always desires evil, and always does good.*

The other party recognise the working classes as citizens, as adults, as persons who have attained their legal majority, as free moral agents; and they seek, so far as they can consistently with the actual state of the people, to follow out this principle to its practical consequences. They wish a labourer, as well as his employer, to feel that he is responsible for his own conduct—that he will (according to the distributive justice of this world) be rewarded for his industry and frugality, and suffer for his idleness and improvidence. They wish, above all, not to regard the labourer as a sort of hybrid animal, compounded of the slave and the freeman; and they are confident that the application of this delusive theory, in detailed measures of legislation, will only tend more and more to exhibit its radical unsoundness, and to reduce it to a practical absurdity. They concur with Burke in avoiding, as far as possible, all lamentation over the condition of the working people; and in thinking that it is a fraud to undertake any permanent improvement in their state, but by inculcating upon them patience, labour, sobriety, frugality, and religion.† They hope to improve the physical condition of the poor, by improving their intellectual and moral condition. They do not believe that man is *perfectible;* but they know from experience that he is *susceptible of improvement;* and they believe that the working classes, in the most civilized countries, are far from the point which it is practicable for them to attain. They seek not to restore any past state of the world, either real or idealized; but to produce a form of society resembling the present, with its evils diminished, and its characteristic excellences increased and diffused. They do not disguise from themselves the uncertainty and risk which attend all political and social reforma-

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* ‘ Ein Theil von jener Kraft,
Die stets das Böse will und stets das Gute schafft.’
Faust.

† Burke’s *Thoughts on Scarcity.*

tions. They are aware of the blindness even of the most keen-sighted, when the future is concerned. They admit that society advances by groping its way in the dark, like miners exploring a vein. But they can discover no other mode of social progress, and they believe that experience, the only light, points steadily in this direction.

The two sets of opinions which we have opposed may, as it seems to us, be thus briefly characterised—the one as a *short-sighted humanity*, adverting only to the immediate wants of the actual poor, without considering the future lot of themselves and their class; the other, as a *long-sighted humanity*, mindful of ultimate consequences to the poor in general. The former removes, or attempts, or appears to remove, the actual evil. The latter is less occupied with the actual evil, but seeks to prevent its recurrence, by drying up its source. The former charges the latter with hardness and inhumanity, on account of this comparative indifference to present suffering. The latter retorts the charge by saying, that it sacrifices the permanent interests of the working classes, and of society at large, for the sake of temporary and ineffectual expedients, which, in the end, augment the distresses which they partially relieve.

It is our firm conviction that no panacea is to be found for the privations and sufferings of the working classes, in any legislative measure or combination of measures. Legislation may assist, but it can only assist. Their physical improvement can be but gradual, and every step will be gained with difficulty. We do not believe that their condition will ever be materially improved by a Poor-law or a Ten-hours bill, or any other eleemosynary or protective system, which assumes that the free workman is still, virtually, in a servile state; and that he is to be preserved against the action of competition by regulations conceived in the spirit of the Slave Codes. We look to the improved education—intellectual, religious, and moral—of the working classes; to the formation of better habits; and to the diffusion among them of sounder opinions—for the principal causes of their economical amelioration. We therefore coincide, in the main, with the latter of the two tendencies which we have described. But the danger to which it is subject is, that it may neglect too much those palliatives of actual misery which are practicable; and may sacrifice much certain mitigation of present ills to advantages which are future, uncertain, and perhaps not attainable in the existing moral state of the working classes.

In our opinion, the true practical wisdom with respect to legislation for the labouring classes of this country at the present

time, lies in a clear recognition of the necessity of working out the practical consequences of their *free condition*; and in seeking to prepare them for a time when all the vestiges of a servile state may be obliterated from our law and our practice. The object of our legislature ought to be to make the working man truly independent, and capable of acting and providing for himself, without being placed in the tutelage of the State and the upper classes of society. At the same time, while this object ought to be kept steadily in view, the utmost caution should be observed in its pursuit: it ought never to be forgotten, that we cannot change the moral and intellectual condition of the grown-up generation; and that, however unwise it may be to sacrifice the future to the present, it is not always safe to sacrifice the present to the future.

Before we dismiss the important subject which we have attempted to discuss in this article, we are desirous of adverting to a view of relief for the poor, which has recently been revived in several quarters; particularly in connexion with the opinions of what are commonly called the Young England and Tractarian Schools. This view, which oftener assumes the form of regret for the past than of practical reform for the future, seeks to connect the relief of the poor with the Church and its endowments. It is fairly, though, as is usual with him, diffusely, represented by Mr. Alison, in the following passage of the concluding chapter of his *History of Europe*:—

'The great sin of the Reformation was the confiscation of so 'large a portion of the property of the Church for the aggran- 'dizement of temporal ambition, and the enriching of the nobi- 'lity who had taken a part in the struggle. When that great 'convulsion broke out, nearly a third of the whole landed estates 'in the countries which it embraced, was in the hands of the 'regular or parochial clergy of the Roman Catholic Church. 'What a *noble fund* was this for the moral and religious instruc- 'tion of the people, for the promulgation of truth, *the healing of* 'sickness, *the assuaging of suffering*! Had it been kept together, 'and set apart for such sacred purposes, what incalculable and 'never-ending blessings would it have conferred on society! 'Expanding and increasing with the growth of population, the 'augmentation of wealth, *the swell of pauperism*, it would have 'kept the instruction *and fortunes* of the poor abreast of the 'progress and fortunes of society, and prevented, in a great 'measure, that fatal effect, so well known in Great Britain in 'subsequent times, of the National Church falling behind the 'wants of the inhabitants, and a mass of civilized heathenism

'arising in the very heart of a Christian land. *Almost all the* '*social evils* under which Great Britain is now labouring, may 'be traced to this fatal and most iniquitous spoliation, under the 'mask of religion, of *the patrimony of the poor*, on occasion of the 'Reformation. But for that robbery, the State would have 'been possessed of lands amply sufficient to have extended its 'religious instruction for any possible increase of the people; '*to have superseded the necessity of any assessment for parochial* '*relief*, or general instruction; and to have provided, without 'burdening any one, for the whole spiritual and temporal wants 'of the community. When we reflect on the magnitude of the 'injustice committed by the temporal nobility in the seizure at 'that period of so large a portion of the funds of the Church, '*and observe how completely all the evils which now threaten* '*the social system in Great Britain, would have been obviated,* '*if that noble patrimony had still been preserved for the poor*, it 'is impossible to avoid feeling, that we, too, are subject to the 'same just dispensation which has doomed France to oriental 'slavery for the enormous sins of its Revolution; and that, if 'our punishment is not equally severe, it is only because the 'confiscation of the Reformation was not so complete, nor the 'inroads on property so irretrievable.'

We have, on a former occasion, expressed our opinion—and not disparagingly—of Mr Alison's voluminous work; but with respect to the above passage, we must say that we have hardly ever happened to find so great a number of questionable doctrines collected within so small a space, and expressed in so confident a tone.

We must remark, in the first place, that the Church and Abbey lands, at the time of the Reformation, were not, in any intelligible sense of the expression, the *patrimony of the poor*. They were appropriated exclusively to the payment of Ecclesiastics and the service of the Church; and if the wealthy monasteries gave alms freely to the poor on their lands, so did likewise the great lords and lay proprietors. If, therefore, the rents of these lands were to be applied, in part, to the relief of the poor, this destination of them would have implied a forcible interference on the part of the State, and a total change in their application. Mr Alison does not state whether he would have separated a portion of these lands, and vested them in the hands of trustees for charitable purposes, or whether he would have left them in the hands of the clergy. We presume that he does not reprobate the extinction of the Monastic establishments, and that he contemplates the confiscation of their property at least by the State. In whatever way, however, he would have settled the matter,

a large part of the soil of England (nearly a *third*, according to his statement) would have been held in mortmain; and its rents collected by government agents, and applied to various public purposes. Now, we confess that this is a state of things which, far from regretting, we think would have been deeply to be deplored. We can discern in it nothing conducive to the interests of society. The government, as in Oriental countries, would have been the great landlord; the rents of lands would, to a certain extent, have supplied the place of taxes. The lands thus appropriated to charitable purposes would probably have been managed by negligent trustees: the thirty-two volumes of Reports of the Charity Commissioners give some insight into the probable abuses which would have attended a more extensive system. Moreover, who would have decided as to the local distribution of the produce of such vast endowments, capriciously distributed over the country? A large part of Westminster belonged, we believe, to the Abbey at the time of its dissolution. The value of that property is now immense. If the rents of it were applicable to the relief of the poor, on what principle would their distribution, as to *locality*, be regulated?

We confess that we are not favourable to large endowments, of either Land or Money, for purposes of a public nature. After a time, the purpose to which they were originally devoted becomes useless or mischievous; and then a compromise is effected between the will of the founder and the exigencies of the present generation, according to a sort of *cy pres* doctrine, by which neither object is really attained. Besides, land in mortmain is always managed by a non-resident landlord, who renders no public services in respect of it, and its inalienability is an evil to the neighbourhood. Nor can the appropriation of a part of the rents of the country to charitable purposes increase its annual produce, and power of payment; though it may possibly diminish the national wealth.

In our opinion, the Government ought to be the Great Endowed, and its endowments should be derived from the annual taxes, and their application subject to the perpetual revision of the legislature. If the poor are to receive relief to the amount of five or six millions a-year, it is best that this sum should be levied equally over the whole kingdom by annual taxation, and disbursed and accounted for by public responsible officers. The relief of the poor, when conducted on a large scale, necessarily connects itself with innumerable questions of civil economy and municipal administration; and is in its nature essentially a *secular business*. In England it has always been administered exclusively by civil authorities. Even in this part of the Island, where it

has been partly founded on the church collections, and administered by the kirk-session, it has now, by the recent statute, been placed under the control of an exclusively Lay Commission. The views favoured by Mr Alison seek to transfer all the benevolent functions of society, such as relief of the poor and education, to the Church; and to leave to the State merely the task of protecting its subjects against foreign and domestic enemies. It would be our desire, on the other hand, that the State should sometimes appear in a gracious as well as a stern attitude; that it should relieve suffering and diffuse knowledge, as well as punish crime and wage war; that, for example, while it maintains the integrity of the Empire against those who seek to detach Ireland by intimidation or force, it should assume the duty of averting starvation from the famishing peasantry of that country.

If, however, the relief of the poor is to be a secular business, founded on compulsory taxation, it must be administered like other legal systems.* It cannot be made a matter both of feeling and compulsion. If taxes are levied, there must occasionally be distress and sale of goods; if they are received and disbursed by public officers, there must be a regular accountability and audit. Trustees of public money must execute their trust according to the legal regulations and conditions.

With a system such as this, it is impossible to combine effectually a distribution of voluntary alms, collected under the influence of the Church. The collections at the Offertory can never be renewed, or rather introduced, so as to form either a substitute or a companion for the English Poor-law. As Sir Littleton Powys observed, (in his letter to the Chancellor Lord Parker upon the case of Rex v. Hendley† in 1719,) these collections, if made

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* The money expended for the relief of the poor in England alone, from 1813 to 1844 inclusive, amounted to no less a sum than L.190,369,632; in the ten years since the passing of the Poor-Law Amendment Act, (1835-44,) the amount has been L.47,252,812. Probably all the nations of the world put together, (including Scotland and Ireland,) have not expended so large a sum for this purpose.—(*See Parl. Paper*, No. 30, session 1845.) Of the number of persons relieved in England, the proportion receiving *out-door* relief since 1834, has varied from eighty-nine to eighty-five per cent; and those receiving *work-house* relief has varied from eleven to fifteen per cent. In no year has the number of paupers relieved in the work-house exceeded fifteen per cent of the whole number receiving relief.—(*Eleventh Annual Report of Poor-Law Commissioners*, p. 168, ed. 8vo.)

† See 15 Howell's *State Trials*, 1407. In this case a collection had been made during the reading of the Offertory sentences at Chislehurst

constantly, would be semi-compulsory on the persons attending church. And if a large compulsory tax was exacted in the form of poor's-rate, and an additional contribution, the payment of which could scarcely be escaped, was likewise obtained, resistance would infallibly be made to the double burden, and one impost or the other would be modified.

With respect to Mr Alison's belief, that the ills in the present social state of England are a temporal visitation sent by Providence for the grants of Abbey lands in the reign of Henry VIII., we can only say that he appears to us, taking his own view of history, to be rather capricious in his choice. May not the nation, we would ask him, rather be expiating the guilt contracted by their ancestors, in the execution of Charles I., or perhaps in the expulsion of their rightful Prince, James II.? Possibly, however, Mr Alison preferred the earlier event,—remembering that passage of Virgil, in which he supposes the civil wars of the Romans to have been a punishment, not for any recent misdeed, but for the perjury of their ancestor Laomedon in deceiving the Gods who built the walls of Troy.

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church in Kent, for the children of St Ann's, Aldersgate, with the authority of the rector. A disturbance took place during the collection; and the preacher, with some other persons, were tried at Rochester assizes for illegally collecting alms in church, and were, under the direction of the judge, Sir L. Powys, found guilty. In his Letter to Lord Parker, Sir L. Powys says:—'This case, if under a general consideration, is of a vast extent, and mighty consequence to the King and People, and at which the very legislature may take umbrage. *The levying of money is the tenderest part of our constitution;* and if it may be done arbitrarily, under the show and form of charity, (which may comprise all good works and all good intentions,) it cannot be said whither it may go. . . . *And though it be said, it is all but voluntary giving, yet it is a sort of compulsion, by the solemnity in the church, and vying with others, and being marked out, if refusing, or giving meanly.*—(P. 1418.)

ART. IV.—1. *Zwei Bedenken über die Deutsch-Katholische Bewegung.* (*Two Series of Remarks on the German Catholic Movement.*) By Dr C. ULLMANN, and ALBERT HAUBER. 8vo. Hamburg: 1845.

2. *Die Geschichte des Heiligen Rockes unseres Heilandes, welcher in der Dom Kirche zu Trier aufbewahrt wird.* (*The History of the Holy Coat of our Saviour, which is preserved in the Cathedral at Trèves.*) By JOSEPH VON HOMMER. 12mo. Bonn: 1845.

3. *Der Helige Rock zu Trier, und die Zwanzig andern Heiligen Ungenähten Röcke. Eine Historische Untersuchung.* (*The Holy Coat at Trèves, and the Twenty other Holy Seamless Coats. An Historical Inquiry.*) By Dr J. GILDEMEISTER, and Dr H. VON SYBEL. 8vo. Bonn: 1845.

4. *Geschichte der Gründung und Fortbildung der Deutsch-Katholischen Kirche.* (*History of the Origin and Formation of the German Catholic Church.*) By Dr EDWIN BAUER, a Clergyman of the German Catholic Church. 12mo. Meissen: 1845.

5. *Notes on the Rise, Progress, and Prospects of the Schism from the Church of Rome, called the German Catholic Church, instituted by Johannes Ronge and J. Czerski, in October* 1844, *on occasion of the Pilgrimage to the Holy Coat at Trèves.* By SAMUEL LAING, Esq. 12mo. London: 1845.

6. *The Apostolic Christians, or Catholic Church of Germany: a Narrative of the Present Movement in the Roman Catholic Church; comprising Authentic Documents with Reference to the Coat of Trèves; the Confessions, Protests, and Organization of the First Seceding Congregations; and the Acts of the General Assembly of Leipzig.* Edited by HENRY SMITH, Esq., *With a Recommendatory Preface,* by the Rev W. GOODE, M.A., F.S.A. 12mo. London: 1845.

7. *A German Catholic's Farewell to Rome: a Short Account of the Religious Movement actually taking place in Germany. Dedicated to all who interest themselves in the Abolition of Popery.* By an English Resident in Germany. *With a Portrait and Memoir of Johannes Ronge, the Luther of the Nineteenth Century.* 12mo. London: 1845.

THOUGH it is not very pleasant to speculate on the magnitude or importance of changes yet in progress, the recent religious movement amongst the Roman Catholics of Germany is an

occurrence of which our readers may not unnaturally expect us to give them some account. It is safer, no doubt, to be historians of the past, than prophets of the future. The latter we need never be; yet something more than the first is often required of the public Journalist, who must do his best to aid his readers in forming an opinion of passing, as well as of past events; and must therefore sometimes venture, on evidence which may be more or less incomplete, to express opinions as deduced from such evidence, which time may show to be more or less erroneous. All that can be demanded of him, is, that he should sedulously seek the most authentic sources of information, state the evidence thus obtained with conscientious impartiality, and conjecture from it the complexion of the future with modesty and caution. And he who acts otherwise—who pretends to cast the horoscope of revolutions still in their cradle, with the confidence of some astrological quack—has not only read to little purpose the lessons of history, but shows himself incapable of being taught even by the numberless failures of those who have been bold enough to prophesy, where it is given to man only to guess. Such are the infinitely varied, and in themselves ever-varying causes, which determine the course of great revolutions, whether political or religious; such the conflict of interests and passions—interests and passions often very remotely connected with the main action of the drama; such the influence of what, in the language of mortals, is called 'accident,' as well as of unlooked-for causes suddenly supervening 'in the very moment of projection,' that a merely human doctor of politics may well be often tempted to retire from practice, with the reason that the French physician assigned for doing the like, 'that he was tired of guessing.' And this is especially the case, when the observer is situated out of the immediate sphere of action; when, to borrow an illustration from Astronomy, he has to make perpetual allowance for parallax, and to correct his observations by transferring himself to an imaginary centre.

We have endeavoured to bear these observations in mind, in penning the following brief remarks on the history and probable consequences of that recent religious movement on the Continent, which some confidently hail as the dawn of a second Reformation, and which others look upon doubtfully, as but a brilliant meteoric light; which some think will be both permanent and extensive; others again, extensive for a time, but not permanent; and others, neither permanent nor extensive.

We think it a favorable omen for the *permanence* of this movement, whatever its extent, that it is not an impulse of yesterday. This has been too frequently overlooked by English writers on the

subject, who have been apt to speak of the pilgrimage to the 'Holy Coat of Trèves,' instituted during the autumn of the past year, and of which we shall presently give some further account, as the sole or principal cause, whereas it was but the occasion of the movement. We confess we should have had but little faith in the steadfastness of any changes which had been merely the result of a sudden impulse, however strong for the time. It could not, surely, have been so wonderful, that a few members of the Romish Church (and they are still *in proportion* few) had been so disgusted with the exhibition at Trèves as to quit her pale, as that a million and a half of human beings in the nineteenth century could be prevailed upon to patronize it; and if it were a matter of transitory feeling merely, it would be much more probable, that in a country so circumstanced, the few recusants would be re-absorbed, or die without propagating the species, than that any impression could be made on the immense majority; on the multitudes who could signalize their devotion to their spiritual mother by such acts of humiliating fealty, and who thereby showed themselves bound to her by the double ties of profound ignorance and intense docility—each the safeguard of the other. Those who profess to see, in the exhibition of the 'Holy Coat of Trèves,' the primary cause of the movement, are fond of dwelling on the somewhat similar circumstances under which Luther commenced the Reformation; and we admit that there are obvious and curious analogies between the two events. It is impossible to think of the 'Holy Coat,' the purposes for which it was exhibited, the spiritual lures held out to the pilgrims, and of Ronge's energetic protest, without thinking of Tetzel and his indulgences—of Luther and his Theses. But in truth the analogy lies still deeper, and may be traced still further. A gradual preparation for the event had in both cases been going on for years; especially in the minds of the chief originators. As we recently had occasion to remark, nothing is more evident, in perusing the early correspondence of Luther, than that the germ of the Reformation existed in his bosom long before the appearance of Tetzel in the neighbourhood of Wittemberg, and that, if the indulgences had not developed it, something else would. In like manner, if we look at the published confessions of the chief instruments of the present change, we find them expressly assuring us, that this was also the case with them;* that the mummery of the Holy Coat, was 'the

* See Ronge's *Rechtfertigung*, (pp. 6–11,) or his *Leben und Wirken*, (p. 11.) Also Czerski's *Rechtfertigung meines Abfalles von der*

'one drop more' which filled the cup to overflowing, the few grains of tartarized antimony which provoked an oppressed conscience to throw off its load; that for years they had lived utterly estranged from the entire spirit of the system to the letter of which they were still bound; and that no language can adequately express the weariness of soul with which they acquiesced in the observance of an institute in which they had ceased to believe, and wore the livery of a master whom they at once feared, detested, and despised.

But not only in the previous mental history of the chief instruments of the present revolution, do we see indications that its germ existed in their bosom before the pilgrimage to Trèves gave it shape and substance; but we have abundant proofs, that through a great part of Catholic Germany the same dissatisfaction had spread;—just as the remorseless exactions, the insatiable cupidity, the outrageous corruptions of the Papal court, had provoked similar dissatisfaction in the days of Luther. The present manifestation has, indeed, been the growth, and is at length the expression, of twenty years of discontent. We do not affirm this from conjecture, but from conversation with men thoroughly well acquainted with the present condition of the German mind, as well as from the express assertions of many of their most intelligent writers. Such is the view of Dr Ullmann and Albert Hauber, authors of one of the publications prefixed to this article. Both are Protestants; the former a writer of considerable distinction.

Dr Ullmann dates the origin of the movement many years before Bishop Arnoldi of Trèves thought of exhibiting the Holy Coat. The abuses which he specifies as having, amongst others, given birth to extensive discontent, are in the main the same as those which have so long agitated the minds of the Romish clergy in Silesia; which the excellent Bishop Sailer, the devoted Martin Boos, and others, longed to see reformed;—a reform which they urged with a pertinacity which made Rome regard them as her enemies, while her inflexibility, on the other hand, kept them in a state of precarious subjection to her. These points are auricular confession—the Latin service—communion in one kind, and the celibacy of the clergy. A determination either to lighten the yoke of Rome, or, if that could

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Römischen Hofkirche, (p. 17, 18,) or his *Leben und Wirken,* (p. 7.) The principal facts will also be found in any of the English publications prefixed to this article.

not be, to break it, had been not obscurely indicated in 1843-4, before the pilgrimage to Trèves commenced. As if the long-felt reluctance to submit to ancient abuses had not been enough, the infamous law in relation to mixed marriages, by which Rome imperiously demanded that the issue of every union between Protestant and Catholic should be educated in the faith of the latter, at the peril of excommunication to the offending party, added further fuel to the flame. Nor was this all; general suspicion was excited by the resumption of antiquated and all but obsolete pretensions on the part of the Papacy; and by the revived energy and activity of the Jesuits. On this last point, all writers, both of the Protestant and the German Catholic parties, are agreed. 'This disposition of the public 'mind,' says Dr Ullmann, 'was not the effect of artifice, nor 'was it of yesterday. It had been forming for some time. The 'whole tendency of the age (*die ganze Strömung der Zeit*) 'had profoundly alienated (*innerlich entfremdet*) a large number 'of minds from the doctrinal and hierarchical system of Roman 'Catholicism. The confessional, considered as an indispensable 'ordinance, was regarded by many in the light of an invasion on 'the sacredness of conscience—and was by such, either not observed at all, or observed only in a mechanical manner, as an oppressive duty. The disputes in relation to mixed marriages had 'also occasioned ill blood in not a few families who were affected 'by them. The recent indications of an encroaching spirit in the 'Papacy, (*die neue Erhebung der Papstmacht,*) and the progress of its sworn confederate, Jesuitism, made many a pious and 'noble mind thoughtful; to which must be added, that even apart 'from this, the mass of the indifferent or the freethinking were 'at variance, as with Christianity, so with the Catholic Church. 'Then came the exhibition of the Holy Coat at Trèves. . . . 'Thus were the minds of men roused in our part of Germany; 'the fuel was already prepared, the spark which was to kindle it 'was alone wanting. It came at last from the opposite extremity 'of Germany—from Silesia, and the boundaries of Poland. It 'was a far answering echo—a necessary reaction, from the midst 'of the Catholic Church itself, against what had long since taken 'place, and especially against what was taking place at Trèves.'

We think it then clear, both that the foundation of this revolution had been long laid; and that this circumstance affords a favourable omen for its possessing permanence, whatever may be its extent. Transient emotions, however strong, however extensive, lead but to transient results. It is by the slow process of years, and the concurrence of many causes, that those deep

convictions and that settled purpose are formed, which inspire persevering opposition to an ancient system, and which are proof alike against cajolery and intimidation; it is thus that are created habits of thought hardened by time, till they are as difficult to change as the very prejudices against which they are directed. Paroxysms of very general but transitory excitement occur in the history of every people, from the influence of some passing event,—excitement sometimes so intense that one would imagine that the most stupendous changes must be consequent upon it. It passes as a dream, and leaves in a few years scarce a trace behind it. It is like the mountain-torrent, swollen by a night of tempest, and dry again before another sun has gone down. A permanent revolution of popular opinion rather resembles a river, fed in remote but unfailing sources, and gathering as it rolls along, from many petty but still perennial tributaries, its ample flood of waters.

The causes which Dr Ullmann specifies as having originated the present state of the German mind, are of this character. They lie deep in the Romish system itself, and must continue to irritate and alienate till they cease to exist.

It must be admitted—assuming, with Dr Ullmann and other intelligent Germans, that the pile was already laid—that a more complete or expeditious mode of lighting it could not have been devised than the exhibition of the 'Holy Coat.' It suggested at once a comparison with the proceedings of Tetzel; and, considering the different character of the age, it can scarcely be said to be marked by less effrontery than the sale of Indulgences. It is indeed one of the most memorable events of our time, and may justify us in pausing upon it for a few minutes.

It is far from our wish to give pain to the members of any communion by dwelling on this gigantic act of folly; but it is due to truth that so instructive a lesson should not be disregarded; and to humanity that such an outrage, perpetrated in the name of religion, should not pass without censure. Indeed, Protestants may well be pardoned for plain speaking, on a proceeding with which Romanists themselves are so little satisfied; which has rent their communion itself asunder, and which has called forth the censures of many of the most enlightened men who still remain within her pale. They dare not defend, and they cannot leave her.

In whatever point of view the pilgrimage to Trèves is regarded, it seems to be equally worthy of attention. It is remarkable that Rome should have ventured on such a step at all; still more so, that having ventured, she should so far have

succeeded. When we reflect that it was a somewhat similar outrage which condensed into so dark a cloud the electricity which, before the first Reformation, pervaded the atmosphere of the Church, and that the explosion which followed shook her empire to the foundations, it is wonderful that she should have ventured to renew any thing like the same experiment on the same soil. Our surprise is augmented when we reflect, that, as we have already seen, the same elements of discontent lay around her as in Luther's time. We are yet more surprised when we reflect, that her last experiment with the same spiritual relic (made thirty-five years ago) excited murmurs which ought to have rendered her adherents doubly cautious of descending, with lighted torches, into a mine which had been so long closed. And lastly, our wonder is increased to the uttermost, when we further reflect, that, resolving to renew this experiment on popular credulity, she should have done so under circumstances which, taken altogether, render it as audacious as any attempt hazarded in the age of Leo X., or by any of his emissaries—Tetzel not excepted. It was made, let us recollect, not in the beginning of the sixteenth, but the middle of the nineteenth century; not in a period of ignorance, but of widely diffused knowledge and universal education; not amongst a people of undivided faith, where each man's own superstition might keep his neighbour in countenance, but side by side with Protestantism, and in the midst of it; not in an age of drowsy acquiescence in the claims of the priesthood, but in the midst of a rationalistic and free-thinking generation; in a word, in the very midst of inflammable materials, which required only a single spark to explode them. To all which must be added, that it was to be made, not by means of some plausible novelty, but by one of the most threadbare artifices—one of the most vulgar appeals to popular credulity—Rome ever condescended to employ. The legend of the holy coat, or 'seamless garment' of the Saviour, which tradition says is in the keeping of the clergy of Trèves, and which that same veracious teacher also says is in the possession of *twenty* other churches, is as gross an imposture as any on which the pardoners of the middle ages depended for the performance of the most real and most profitable of all their miracles—the transfer of the solid gold from the pockets of the people to their own. Nay, as if for the purpose of making the experiment under all possible disadvantages, this particular relic is beset with difficulties peculiar to itself, and which do not affect many others. With regard to many of the asserted relics of the Church of Rome, all we can do is to demand proof of their genuineness; and if a man say that any one of them is the

thing it professes to be, we should have the same difficulty in disproving the assertion, as if he said that the people in the moon have tails. Rome cannot prove, and the objector cannot confute. The intrinsic improbability, the absence of all historic proof, and an instinctive dislike of absurdity, form the *ratio sufficiens* for rejecting them. But in the present case, he who believes in the holy coat of Trèves, must believe not only without reason, but against it; not only in the continued performance of multitudinous miracles, which have kept this extraordinary garment in its present integrity, but in that greatest of all miracles, which makes both sides of a palpable contradiction true; he must believe, without a shadow of historic probability, not only in the original recovery of this holy garment, some centuries after the crucifixion, by the keen scent of the relic-mongering Helena; and in its sudden re-discovery, after some more centuries of oblivion, as a sacred, but wholly unaccountable deposit in the cathedral of Trèves; but he must believe all this in the face of twenty other traditions, which assign the possession of the relic to other places,—traditions, some of which undeniably have as much plausibility to recommend them, and none of which can possibly have much less. And as if to involve every faithful son of the Church in the last degree of perplexity, or perhaps to try his docile faith to the uttermost, two at least of these holy coats have the sentence of infallibility itself in their favour. Leo X., in his bull of the year 1514, pronounced, in *his* infallibility, that that at Trèves was the genuine garment. But alas! Gregory XVI., not infallibly convinced of his predecessor's infallibility, or infallibly convinced that he infallibly erred, also infallibly assigned the same honour to that at Argenteuil. This mistake cannot well be rectified, except by an infallible declaration that two are one. *Rom hat gesprochen*, say Drs Gildemeister and Sybel. These gentlemen have published a tractate of more than one hundred pages on the claims of all these 'holy coats;' and a most amusing and elaborate production it is. They have gone into the subject with all the pains-taking diligence and minute accuracy of German erudition—for which, as may be supposed, it possesses unusual attractions. Not a nook, not a corner, of this profound inquiry has been left unexplored. Every thing which scanty history and more copious tradition could contribute—every thing which ingenious conjecture and personal inspection could suggest—has been pressed into this solemn investigation. Not content with reading up the whole literature of the subject, they have called in the evidence of those who have had the advantage of scruti-

nizing the matter by their senses, and who have aided these by science; who have measured the garment with the accuracy of tailors, and examined its colour and texture through a microscope. And the conclusion to which our authors have arrived, is perhaps much the same as most persons would have arrived at without any such learned aids—that the said holy coat is no Eastern garment at all! If we could suffer ourselves to smile at any attempt to elicit truth, surely it would be impossible to refrain, at seeing two grave professors thus prodigal of proof on such a theorem. But we cannot allow ourselves to be otherwise than well pleased with any effort to disabuse humanity of any one of its superstitions; and can only hope that those who fail to be convinced by the more obvious arguments—who can surmount the difficulties arising from intrinsic probability, absence of historic proof, and *infallible* contradictions—may derive satisfaction from the other and more minute statements of Drs Gildemeister and Sybel. To us honest Protestants, of course, the book (however pleasant to read—and very pleasant it is, as an acute piece of historic criticism) is wholly unnecessary. Such an apparatus of proof for such an object, seems like resorting to trigonometry to ascertain the height of an object three feet high; or it may remind us of the tailors of Laputa, who 'took the altitude by a quadrant, and described the dimen-'sions of the whole body by a rule and compasses.'

It is curious that Martin Luther, in his very last sermon, makes reference to the delusions practised by means of the holy coat at Trèves, and in his usual style of energetic invective.

Such is the relic on which the Romish Church thought it right to rely as a means of rekindling the fervours of the people, or of testing their strength. Even the chief advocate of the Holy Coat is not ashamed to admit the extreme dubiousness of the grounds on which veneration is challenged, and to plead for its genuineness with a fainting heart. The utmost Joseph Von Hommer, late Bishop of Trèves, ventures to say, is as follows:—'The preceding is all I have been able to collect respecting 'the Holy Coat. Till future sources of information shall either 'refute or confirm what I have adduced, we must content our-'selves with what has been brought forward. The decision of 'any ancient matter, which cannot be *fully proved*, must be re-'ferred to a constituent principle in the mind of man. If, from 'whatever cause, he is prejudiced against any thing, he will 'always be opposed to that which contradicts his views; but if he 'is predisposed in its favour, he readily accepts partial proofs as 'valid ones—and willingly abandons himself to the belief, that

'what he wishes is really true. An unbiassed mind will, without 'reference to the question, always reverence whatever is vener- 'able, for the sake of its antiquity.'* Singular logic!

The purpose for which the relic was to be exposed was worthy of the relic itself. It was from a similar motive with that which induced Leo's sale of Indulgences, and by which he justified it. In his case, the completion of St Peter's Cathedral at Rome was the object; in this, the repair and embellishment of the Cathedral at Trèves.

And lastly, the promises of spiritual immunities and blessings were hardly less ample than those which a Friar of the olden time might have proclaimed. Part of the official circular announcing the exhibition, is as follows. It will be observed that the Bull of Leo is quoted, as if an interval of more than three centuries had nothing to do with the matter:—

'During the course of the present year, the said holy relic 'will be exhibited in the Cathedral church, on the 18th of 'August next, for a period of six weeks, to gratify the pious 'desires of all those who have formed the design of undertaking a 'pilgrimage to Trèves, to honour the holy coat of our Divine 'Redeemer by direct inspection; and *thus obtain the entire abso- 'lution promised by Pope Leo X. on the 26th of January* 1514. 'According to that celebrated Bull, the said Pope, desiring that 'the Cathedral at Trèves, which enjoys the honour of being 'the repository of the Seamless Coat of our Lord, and of so many 'other holy relics, may be distinguished in a corresponding manner 'by magnificent ceremonials and splendid ornaments, grants *full 'and perfect absolution, throughout all succeeding ages*, to those of 'the faithful who shall make a pilgrimage to Trèves on the 'exposition of the Holy Coat—sincerely repenting of their sins, 'and doing penance for the same, *or who have formed the steadfast 'resolution to do so*, and, *moreover*, contribute *liberally* towards the 'suitable endowment of the Cathedral at Trèves.'

Upon the whole, the experiment of Bishop Arnoldi, under all the circumstances of the case, would appear to be little short of infatuation. Where, we are ready to ask, was that astute spirit, that profoundly subtle policy, which is not unjustly attributed to the Romish Church, and by which she is supposed to read sagaciously the signs of the times, and to profit by every vicissitude in human affairs? The answer is, that in relation to that most important part of all government—the knowing how to adapt

* The Bishop's tract was published in 1834, and republished at Bonn, 1844.

laws and usages to an altered state of society—the knowing when and how far reform has become inevitable—she has never evinced one particle of true policy. Be it a feature of wisdom or of folly, she never yields; of wisdom, it will of course be regarded by those who venerate her as the depository of that truth which is itself unchangeable; of folly, by those who think that she is incrusted with the errors and corruptions of other ages, which the present will not bear. With the same desperate consistency did she act at the period of the Reformation; the reforms she attempted were all nugatory or insignificant; she adhered with inflexible pertinacity to every essential corruption of her system; and when at length, after numberless attempts to evade it, she yielded to the clamours of all Christendom for a general council, she stereotyped all her principal errors, and gave them the deliberate and irrevocable sanction of Trent. The Decrees of that Council have thus been, in a thousand cases, a millstone about her own neck—binding her to her irreversible decisions, when time, the great reformer, had already proclaimed them obsolete. We can hardly be surprised, therefore, that Bishop Arnoldi should have thought it quite reasonable to bring on the stage of the nineteenth century, the obsolete machinery of superstition which even the sixteenth could not bear without rebellion.

But though the clergy of Trèves, in resolving on this exhibition, egregiously miscalculated in relation to the elements of discontent which lay around them, and in relation to the possible remote consequences, they did not miscalculate the present power of Rome over the vast multitudes of her communion. As we have before said, remarkable as may have been the audacity of the experiment, still more remarkable is the fact, that it should have been so far successful.

The circular of Bishop Arnoldi was issued on the 6th of July 1844. The exhibition began August 18th; and between that date and the middle of October, it is calculated that nearly, if not quite, a million and a half of pilgrims visited Trèves on this pious errand. Day after day, for weeks and months, they streamed into the city by thousands, and from every quarter of the compass; every road was thronged with the devout travellers, and every species both of land and water carriage employed to bring them to their destination; the steamers on the Moselle, gaily decorated, swarmed with pilgrims from the Rhine, Coblentz, Bonn, Cologne, and even from France, Belgium, and Holland, who were greeted on their landing with the thunder of artillery and the ringing of bells. Procession after procession, each with its priestly fugleman at its head, with banners flying and music playing, filed into the privileged city; while its environs,

and the city itself, were thronged with the incongruous, or, as some would say, not incongruous accompaniments of jugglers, mountebanks, and conjurers. And this immense and motley throng were gathered, from a country in which education has been the universal boast, to pay their adoration to an old coat! We speak advisedly; for the hymn which they sang, as they prostrated themselves before the Holy Coat, and worshipped, began with the words, 'Holy Coat, pray for us;' while many subjoined, 'O Holy Coat, we pray to thee!' *

Well may Dr Ullmann declare, that it was in glaring contradiction to their present degree of knowledge, both religious and secular.†

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* See *Apostolic Christians*, p. 20.

† Miracles of course were attendant on this exhibition of holy relics, though they seem to have been neither so numerous nor so imposing as those which, rather more than a century ago, rendered the tomb of the Abbé Paris so fruitful a scene of wonders. The most noted of them—the sudden cure effected on the Countess Droste Vischering—is already familiar to the English public. This lady had for years been afflicted with a contraction of the knee-joint. She had long tried all that medical skill could do for her; but like her in the Gospel who was miraculously healed by touching the hem of the garment of the *living* Saviour, she was nothing better for what she had expended on physicians, but rather grew worse—no uncommon case, the calumniators of medical art would say. No sooner, however, did she come in sight of the holy coat, and prostrate herself in adoration before it, than she was instantaneously cured, in proof of which she was enabled to walk to her carriage without the aid of her crutches, merely leaning on the arm of her grandmother. She departed home, as some say, perfectly cured; while others affirm that it was but a temporary alleviation, and that she is once more a cripple. Be this as it may, the crutches were hung up in the cathedral, as a trophy of this miraculous achievement. The Countess Droste Vischering might say to Bishop Arnoldi when she gave the crutches, as Sir Philip Sydney when he handed the cup of water to the dying soldier, 'Thy necessity is yet greater than mine.'

The Doctors, who, as Mr Laing somewhat archly remarks, will suffer people 'to be cured neither with a miracle nor without one,' were not disposed to let this miracle pass unquestioned. They were jealous of any miraculous cures except their own, and unwilling to admit that there are any greater prodigies than those effected by their own powders and potions. Yet we have no doubt, that the palliation in this case (which we by no means suspect to have been other than real) was attributable to the very same causes to which the sons of Æsculapius are indebted for not a few of their surprising cures, and which only the dishonest among them impute to the occult operation of innocent remedies. The holy coat had as little to do with the matter in

During the continuance of this remarkable exhibition, the local authorities of Trèves required, in their wisdom, that both citizens and strangers should avoid all criticism on religious matters and opinions—being doubtless afraid lest 'holes' should be picked in the holy coat.

In spite of such cautions, which, in fact, are always ineffectual, an expression loud enough was soon heard, and that just when the holy coat was at the height of its celebrity. We allude, of course, to the Protest of John Ronge, dated October 1, 1844, from Laurahütte, a mining district in Upper Silesia. His story—as gathered from his own statements in the '*Rechtfertigung*' or 'Justification,' which was subsequently elicited by the accusations of his Roman Catholic adversaries—is soon told. He was born on the 16th of October 1813, in Bishopswald, a village in the circle of Neisse near the Sudetic chain. His father possessed a small farm and a large family—John being the third of

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the one case, as infinitesimal doses of some infinitely innoxious substances have to do with the other. It was, as in so many other cases, unbounded confidence in the physician; the mind triumphing over the body. The influence of the immaterial over the material part of our complex organization is in some degree familiar to us all, and the dependence of some forms of disease on this influence is universally acknowledged. The limits within which the mind can thus be the physician of the body, have not yet been accurately discovered; but for the cure of diseases which *can* be so cured, we would back religious enthusiasm against any faith which was ever reposed in the most impudent empiric which this credulous age has produced. The true test of miracles, and which, where it is found, may well entitle us to consider them as an affair of testimony, must take them clear beyond those limits within which the imagination may be supposed to operate; they must extend not only to the *functional*, but to the *organic*. Such, precisely, is the test to which the Scripture miracles appeal. They are not *tentative*—in some instances successful, and in some not; and they include such critical cases as the resurrection of the dead and the restoration of lost organs, effected in the presence of a multitude of hostile spectators. In *such* cases, we are at liberty to eliminate that indeterminate element—the supposed influence of imagination—and may fearlessly consider the question as one of testimony. An imagination which turns a wooden leg into one of flesh and blood, which makes an assembled multitude of unbelieving men believe it to be done, and that as often as it is required, is a thing not recognised in any sober system of mental philosophy. In the case of the Countess Droste Vischering, it has been shown by an intelligent physician at Kreuznach who knew her, that the effects might be fully accounted for by the enthusiasm of the patient.—See Laing's *Notes*, pp. 28-30.

eleven. His early years were spent in tending sheep, and acquiring the elementary branches of knowledge which form the moderate *curriculum* of a village school. At the age of fourteen his father was prevailed upon to send him to the Gymnasium in Neisse, which he entered in 1827 and did not quit till 1836. He seems to have been a diligent student, but, as usual with men of active character, he preferred history and his native literature, to philology and the classics. From the Gymnasium at Neisse, he repaired to the University at Breslau. Here he dedicated himself to the study of theology, and made up his mind, contrary to the wishes of many of his friends, to become a priest. While at the University, he accomplished the usual term of military service in the corps of sharpshooters, under Major Von Firk. He has not forgotten this part of his course, and seems likely to practise in the 'church militant' with much greater success than he could ever have met with under Major Von Firk.

In 1839 he left the classes of the University and entered 'the 'Seminary,' his residence in which he describes as 'a period 'fraught with the most mournful and painful conflicts.' Brought into nearer contact with the function to which he had dedicated his life, he conceived the deepest abhorrence of it. The 'veiled 'prophet' had uncovered, and the affrighted votary stood aghast. He tells us, 'the confidence I had hitherto reposed in my spiri-'tual instructors was banished from my heart, now that I had 'the opportunity closely to survey their mode of life. . . . 'The degrading fetters, of which I had hitherto been ignorant, 'now galled and oppressed me, and I clearly saw how much 'many of my fellow sufferers endured, and felt the more keenly 'because they dared not avow the cause.' Yet, he says, on leaving the Seminary, of which he gives a very graphic account, 'he was resolved on one thing—to discharge his duties with zeal 'and conscientiousness, to be the instructor of the people who 'might be committed to his care, in the true sense of the word; 'to speak the truth without hypocrisy and without respect of 'persons.' An opportunity soon occurred of testing his firmness. Being appointed to the chaplaincy at Grottkau, his indignation was soon moved at the intrigues of the Ultramontane faction; and on one occasion, when the court of Rome hesitated to ratify the choice of an aged and amiable man, who, on account of his moderation and liberality, had been elected to the vacant bishopric of Breslau, but whose appointment, for the very same reason, was unpalatable at Rome, Ronge gave expression to his indignation in a public journal, and asked, 'Are 'they waiting for a return of the times when men sent a mule to

'Rome laden with gold, to procure a bishopric?' Ronge was suspected of the authorship; he was condemned, suspended and deprived of his cure, without trial, and in spite of the remonstrances of his parishioners and the authorities of Grottkau. He retired to Laurahütte, and there supported himself as a private tutor.

At the time, therefore, that he issued his celebrated protest against the proceedings at Trèves, Ronge was already in disgrace. Of that protest we need not say much; it is already familiar to the public, and is certainly a remarkable production. Dr Ullmann, while very properly tracing a large portion of the effects it produced to the previous state of public feeling—prepared to sympathise, and wanting only a voice—somewhat under-rates its merit. 'It contained,' he says, 'no peculiar or 'significant thoughts.' No—those thoughts were doubtless shared by many who dared not or who could not give expression to them. But there must certainly be something remarkable about a composition which so instantly produces a universal sensation. At Leipzig alone, an edition of 50,000 was sold in a fortnight. It is not every one who can give effective expression to the feelings of thousands, and make them say, 'this is 'our spokesman.' It is not every one who can thus convert latent caloric into the active element of a wide-spread conflagration. And if we look at the composition, we can clearly trace indications of great powers of *presenting* thought, whatever may be the powers of reasoning. The style here and there strongly reminds us of the racy sinewy way in which Luther could briefly express his thoughts. Such is that sentence—

'Bishop Arnoldi of Trèves, ... do you not know— 'as bishop you must know it—that the founder of the Christian re- 'ligion bequeathed to his apostles and disciples, not his coat, 'but his spirit? *His coat, Bishop Arnoldi of Trèves, belongs 'to his executioners.*' And again where he says—'Believe me, 'that while hundreds of thousands of Germans, full of enthu- 'siasm, are hastening to Trèves, millions like myself are filled 'with horror, and the bitterest detestation of your unworthy ex- 'hibition. These feelings are not confined to one class or one 'party, but are felt by all classes, and even by the Catholic 'priesthood. Judgment will overtake you sooner than you ex- 'pect. Already the historian's pen is consigning your name, 'Arnoldi, to the contempt of the present and future generations, 'as the Tetzel of the nineteenth century.' And once more in the conclusion—'Go all, Catholics and Protestants, to the work, 'for it concerns our honour, our liberty, and our well-being. 'Do not bring to shame the spirit of your forefathers, who razed

'the Capitol, by suffering the Castle of St Angelo to domineer 'over you in Germany. Let not the laurels of Huss, Hütten, 'Luther, be disgraced! Give to your thoughts words, and to 'your will deeds.'

Ronge's excommunication was notified to him December 4, 1844. He was spoken of every where as the *schlecte falsche priester*—'the base perjured priest.' The Jesuits, as usual, employed their ancient weapons of slander, and covered him with every species of infamy. It is but just to Ronge to say, that he has completely exonerated himself from all such imputations, and is admitted to be blameless in his life and morals, however immature and undeveloped may have been his religious views. His example of secession was followed by that of several other individuals of note—amongst whom were Dr Regenbrecht, professor in the university of Breslau, and Dr Schreiber, pro-rector of the university of Friburg in Baden.

But it was not long before defection assumed a more formidable character. Secessions were soon to be numbered, not by units, or by tens, but by hundreds at once. Within little more than three weeks after Ronge's appeal, the little Catholic community of Schneidemühl, an obscure town in the duchy of Posen, seceded in a body, formed themselves into the germ of the German Catholic Church, notified the fact to the departmental government at Bromberg, and petitioned to be recognised in the usual forms.

The priest, under whose leadership the movement was organised and effected, was the now well-known John Czerski, whose history, like that of Ronge, is very simple, and told by himself in very few words:—He was the son, he informs us, of poor but pious parents, and was born at Werlubien, a village near Neuenburg. Till the age of thirteen he attended the village school, where he acquired the usual rudiments of knowledge. He was thence removed to the grammar-school of Bromberg, and from this place to the Royal Gymnasium at Conitz, where he prosecuted his studies with considerable distinction. In a year and a half he entered the Marien Gymnasium at Posen, and thence, in another half year, repaired to the 'Episcopal Seminary.' Here, as with Ronge, commenced a series of conflicts, which issued in entire alienation from the Romish system; but there is a marked difference in the mental history, at this period, of these two men. The religious element seems to have been much more decided in Czerski than in Ronge. While the latter chiefly dwells on the degradation which the Romish system imposed on him as a *man*, stunting his intellect, destroying his freedom of thought and action, withering his affections, and reducing him

to a machine, Czerski dwells principally on the degradation which it imposed on him as a *Christian*—the inconsistency of the maxims taught, and the practices enjoined, with the BIBLE. His conflicts of mind, therefore, much more nearly resembled those of Luther, in his cell at Erfurth. Like the first reformer, Czerski studied the Bible, and drew his weapons entirely from that armoury; and his brief refutation of the leading doctrines of the Romish system, bottomed wholly on Scriptural grounds, is exceedingly striking.

The congregation at Schneidemühl drew up a confession of faith and an address, in which they justified these secessions from the Church of Rome in nine distinct articles.

This was the signal of battle. The example of Schneidemühl was immediately followed in various parts of Germany; and, in about four months, communities, renouncing the authority of the Roman Catholic Church, had been formed, or were in course of organization, at Berlin, Brunswick, Leipzig, Breslau, and many other places. Several of these communities, when thus formed, published, like Schneidemühl, their confession of faith; and the discrepancies amongst them seemed to warrant no very favourable auguries of future consolidation.

While all agreed most strikingly in the points on which their several framers justified their secession—in renouncing the Pope's authority—service in an unknown tongue—communion in one kind—auricular confession—the celibacy of the priesthood—and in fact all the points on which Protestants lay the chief stress, it cannot be denied that they exhibit signal, yet, under the circumstances, very natural differences and contrarieties as to positive doctrine. Thus the confession of Schneidemühl, which was far more explicit and minute than many of the others, maintained transubstantiation, while the rest generally abjured it—the seven sacraments, while the rest contented themselves with two—as also a species of purgatory, while others, that of Berlin particularly, reject any notion of the kind. Some content themselves, as that of Elberfeld, with a general adhesion to the confession of Schneidemühl in all *essential* points,—a somewhat vague distinction. On the whole, we cannot but agree with Mr Laing, (who has given a large and faithful account of the early confessions,) that the discrepancies were sufficiently numerous to beget the question, 'How was combined action or organic unity 'possible amidst such discordant materials?' Mr Laing lays so much stress on this, that he doubts the possibility of a Concordat; yet, by a most unaccountable omission, he has neglected to inform us, that at the very moment he was expressing his doubts, the difficulties in question, whether satisfactorily or not, had

been surmounted at the first General Council of the German Catholic Church, held at Leipzig, March 24, 1845.

They were surmounted, partly by adopting a confession exceedingly simple and general, and, theologically speaking, deficient; partly by surrendering many of the points on which differences had existed. Thus the Church of Schneidemühl renounced the large remains of Popish errors found in its original confession. So far as relates to the *negative* side of this Reformation—the *renunciation* of certain doctrines—the newly-formed communities may be said to be unanimous; and, by whatever specious name they may please to call themselves, are as Protestant as Protestants themselves; nay, in some points, they are, as our Oxford divines were wont to say, even more 'Protestant' than the Reformation.' For the *positive* side of the system, it is principally summed up in the first and second articles of the Confession of the General Council of Leipzig, which are as follows:—

'1. The foundation of Christian faith shall be sought by us solely and exclusively in the Holy Scripture, the understanding and expounding of which is the province of reason, thoroughly imbued and affected with Christian principle. 2. As a general summary of our faith, we adopt the symbol which follows:—"I believe in God the Father, who, by his Almighty Word, created the world, and rules it with wisdom, equity, and love. I believe in Jesus Christ, our Lord and Saviour. I believe in the Holy Ghost, in a holy, universal Christian Church, in the forgiveness of sins, and in life everlasting."'

But this satisfies the demands of the theological critics as little as did the discrepancies of the original Confessions; nor are their objections without much appearance of reason. 'It is too 'simple,' cries Dr Ullmann, echoed by Mr Laing. 'A church 'cannot be built on a mere system of negations, or on vague 'generalities.' The Confession leaves many vital questions undetermined, and affords ample space in which the most diverse forms of religious belief may alike take shelter. And in many quarters it is affirmed, that as there are unquestionably amongst the seceders not a few Rationalists, 'advocates of that theory 'which would evolve the essence of religion out of human con-'sciousness, contents itself in general with the ideas of God, 'virtue, and immortality, and honours Christianity merely as an 'historical and oft-clouded development of these universal truths 'of religion,'* so the simplicity of the Leipzig Confession was designed to shield, if not to favour them.

While we would be the last to advocate any unworthy compromise of truth to attain a spurious union, we must confess that

* Ullmann, p. 21.

we are not disposed to attach so much weight, as many have done, either to the arguments derived from the discrepancies in the original confessions, or to the simplicity of that which was at last adopted at Leipzig. The former might surely not unnaturally be expected in the utterances of newly-formed communities, just opening their eyes to the light of truth, and putting forth their sentiments with haste and without concert. The latter was, perhaps, an equally natural attempt to circumscribe, as far as possible, the chances of controversy at so critical a moment.

We admit, however, that this vagueness in the principal article of the Leipzig confession—this comparative absence of the *positive*—constitutes the principal danger which the new church has to fear. That there should have been Rationalists among the Seceders was inevitable; for they are to be found in abundance both in the Catholic and the Protestant churches, and any considerable secession from either would be sure to embrace such an element. The only two important questions are—first, whether they exist in larger proportion than in the other religious communions of Germany; and secondly, whether it was desirable to veil important differences under a vague confession. The former, looking at the general tenor of the confessions published by the separate congregations, we should answer in the *negative;* we doubt whether the Rationalists are more numerous in the German Catholic Church than amongst the Romanists or the Protestants. The latter question we should also answer in the negative, both because it is due to *truth* that essential differences —whichever party be in the right—should not be shuffled over by a designedly vague confession, and because it is not easy to tell what false impressions, or what loss of sympathy and confidence from *without*, may result from such a compromise. Certainly the language of Bauer, the author of one of the volumes at the head of this Article, and who is one of the clergy of the German Catholic Church, is not calculated to appease the alarm which many of the orthodox Protestants have expressed. He defends and applauds the simplicity of the Leipzig confession expressly on the grounds of the very lowest Rationalism, (p. 253;)* while Professor Bayrhoffer of Mar-

* The insinuation, rather than assertion, of Dr Ullmann (p. 21,) would seem to give some countenance to Dr Bayrhoffer's statement—'It were perhaps not unfair,' says he, (*es möchte wohl nicht ungerecht seyn*) 'to assume that the majority, if they would freely speak out, would confess to a more or less determinate Rationalism.' But, as we shall show, the statements of Protestants are to be received with some abatement.

burg claims the whole movement as a triumph of Rationalism. *Die neue Richtung steht entschieden auf dem Boden des Rationalismus.* Such representations are, of course, to be interpreted by the character and wishes of the party uttering them; but, however exaggerated, they entail suspicions which the new community cannot well repel; they are the natural consequence, the inevitable price, of a compromise. It is far better that, if men can agree at all, they should do so, not by concealing their differences, but in spite of them. If it be said, that in this case the differences are such that those who hold them could not form one community if they were avowed, what stronger proof could be afforded of the hollowness of the compromise? We predict, with the utmost confidence, that, after a certain interval, the old controversies must break out till the positive element is more distinctly evolved.* Nor, much as we desire unanimity, can we even wish, for the honour of truth and of both parties, that it should be otherwise. What but an unworthy shuffle can unite in one confession, men who so differ, that, while some believe 'Christ' to be really 'God,' others, with Mr Bauer, think that even the title of the '*Son* of God' is 'oriental,' and not fit for us 'occi-' dentals'—*für uns Abendländer*.—(P. 253.)

We have thus gone into some detail, because we are really anxious to get at the precise truth, and to enable our readers to form an accurate opinion. But we do not hesitate to say, that we doubt whether the Rationalistic element is larger amongst the Seceders than, from the condition of religious parties, was inevitable; and that, in some respects, the differences in the German Catholic Church are even less offensive than in the old communities. If there is a compromise, is that compromise more repulsive than the existence of the same differences with a profession of a symbol which excludes them?

On this ground we are much surprised that Dr Ullmann did not feel with what dangerous weapons he was playing, when he employed some of his arguments against the supposed compromise; and how easily they might be retorted, with interest, on German Protestantism. If the simple confession of Leipzig, which we allow to be theologically meagre, should shelter some discordant forms of faith, his own Protestant Church affords but a melancholy proof that the most stringent symbolic books do not exclude them. The German Catholic Church, with its simple creed, can hardly be infested with a greater amount of freethinking and rationalism

* Since these words were written, and indeed since they were in type, we have learned that the separation of the different elements of the new community has already commenced.

than the Protestant Church has been, with its rigid imposition of creeds, articles, and protestations. The new German Catholic Church will, at all events, escape the guilt of openly sanctioning perjury and contempt of truth. The open misbelief or unbelief of professors and preachers in the German Protestant Church—nay, in the German Roman Catholic Church also—renders it in the highest degree perilous to insist on this point. It was not without reason that Menzel, speaking of this very subject, uttered the caustic words —'Professors smilingly taught their theological pupils that unbe-'lief was the true apostolic, primitive Christian belief, proven 'by reason and revelation; Christ himself—they do not deny 'him—is, in their opinion, a good honest man; but they put all 'their insipidities into his mouth, making him, by means of their 'exegetical juggling, sometimes a Kantian, sometimes an Hege-'lian, now one *ism*, now another, just as may happen to please 'the Professor. In our learned age, every thing depends upon 'Hermeneutics. One man might become a Bonze, and swear 'upon the symbolic books of Fo, and yet, by means of a dex-'terous exegesis, invest the stupid books with as rational a 'meaning as he pleased. They do not *alter the word*; they 'swear upon it, but think of something else.'

Our own country, too, has recently furnished us with abundant proof, that the Thirty-nine Articles may be subscribed with thirty-nine hundred modes of interpreting them—or misinterpreting them, if not naturally, yet 'non-naturally;' while, in the very same country, religious communities, not inconsiderable in numbers, have existed for centuries with a very close approximation to identity of doctrine—absolute identity on all important points—who never framed or imposed a single symbolical document. The simplicity of the Leipzig Confession is of itself of little consequence. As Dr Ullmann himself says, 'the 'more simple a confession is, the better.' A church may be agreed though it has a simple confession; the real difficulty here is, that the church has a simple confession, because it is not agreed. 'We must not first constitute a church,' subjoins the same author, 'and then fit it with a confession; but we must 'first have a definite faith, and then found the church upon it.'

The polity of the newly-formed communities is of a highly popular character, and has the general approbation of Mr Hauber, who even thinks it might be worth while for Protestants to take a lesson from it. The principal provisions are, that the congregations are to have the choice of their clergy—who must have received a theological education—and whose appointment is irrevocable. The remaining regulations may be seen in Bauer or Hauber, or in the little publication entitled 'The Apostolic 'Christians.'

And now comes the important question—What will be the extent of the new movement? what its rate of progress?—a very difficult problem, and one for the solution of which we have but very imperfect data.

The question, of course, chiefly depends on the degree of preparation for this change amongst the Catholic population of Germany. There is no making men free against their will, and the light of heaven itself only seems, to a diseased eye, agony as well as darkness. With reference to this point, the evidence is certainly very conflicting. That there has been extensive indignation at the intrigues and renewed pretensions of the Ultramontane faction, we have already shown, and the new movement is the fruit of it. Nor can it be said that that movement has been hitherto other than eminently successful; it has already issued in the organization of nearly two hundred communities,* and the secession of probably not less than one hundred thousand individuals. It is very difficult to ascertain their number even with approximate accuracy; but the sum-total can be hardly below that we have named.

On the other hand, the mere fact that the Romish Church should have been able to induce no less than a million and a half of pilgrims to repair to the spectacle at Trèves, in spite of their boasted education, shows how extensive is the power which Rome still possesses over large masses of the population.

Nor, in a political point of view, are the difficulties with which the movement has to contend trivial. In some of the states, the whole weight of the governments will be to the uttermost exerted against it; while in others, for various reasons, there will be no more than a doubtful or frigid countenance shown towards it. In all, it seems probable that it will be enduced rather than favoured. In the principal states of the German Confederation we find the population distributed in the following manner:—

	Population.	Catholics.	Protestants.
Austria, ...	11,725,540	11,500,540	225,000 (nearly.)
Bavaria, ...	4,440,327	3,061,547	1,378,780
Wurtemburg, ...	1,701,726	519,425	1,182,301
Saxony, ...	1,757,800	30,375	1,727,425
Prussia and Westphalia,	14,928,501	5,617,020	9,311,481

The minor states have all a mixed population.

In Austria and Bavaria, composing so large a portion of the population, the government is Catholic, and the utmost oppo-

* Bauer has given a list of more than 160 communities (pp. 269-270.) But his work appeared in August, since which there have been considerable accessions.

sition to the movement may be reasonably expected. In Saxony, though the people and the government are Protestant, the King is Catholic, and may be expected to make as much opposition as he can. In Baden the German Catholic congregations are not favoured, but are not prohibited, In Wurtemburg* they are, more wisely, neither favoured nor prohibited, but let alone. Most of the minor states—as Hesse, Anhalt, Saxe-Coburg, Darmstadt—are all waiting, with more prudence than dignity, the course which events may take, or the policy of the more powerful members of the Confederation. Nor must it be forgotten, that, from the very nature of the German governments, both Catholic and Protestant, any movement like the present has to contend with difficulties which would be unknown under our own free constitution,—difficulties arising out of their characteristic jealousy and habitual suspicion of whatever wears the semblance of revolution; as also from the busy meddling spirit with which they interfere in every transaction, great or little, and check and impede all social changes, even where they cannot prevent them. In the minor states, the Princes, having nothing important to do, are apt to degenerate into little better than a sort of royal Paul Prys, love to show their otherwise unknown power by assuming state in trifles, by inflicting petty mortifications, and conferring petty honours. And as all are taught to look up to government as almost the sole fountain of distinction; as so large a portion are expectants of little offices and paltry ribands; as all professional men are under so strict a *surveillance;* and as there is so little that resembles an independent aristocracy, whether of rank, intellect, or wealth, it cannot be but that any movement like the present will have to contend with much; not merely from the hostility of some governments, but even from the prying, bustling, formal spirit of those governments that care nothing about the matter. The odious censorship, also, however imperfectly it may in these days fulfil its office, is an engine which must be expected to be rigorously employed against it. The most stringent application of this species of moral quarantine may, of course, be expected under the *Catholic* princes. And of the extent to which, under the Bavarian government, it has been applied, we may judge

* Yet even in Wurtemburg the king has recently intimated that his silence is not to be construed into any approbation; that it is uncertain what the course of his government may be, *because* it is 'uncertain whether the German Catholic communities will attain consolidation.' So that success seems to be the condition of the approval of the government, which will graciously be pleased to recognise the new church, if id so doing.

from the fact, that it was intimated to the Editor of the *Allgemeine Zeitung*, (which is published at Augsburg,) that he must seclude from its columns the very name of the 'German Catholic 'Church,' and all details of its movements; which, considering that this order was given to a Newspaper, and that 'the move-'ment was emphatically *the* news,' was assuredly an order to enact the play of Hamlet with the part of Hamlet left out.

Considering, then, the character of these all-prying governments, and the extent to which the bulk of the influential classes are dependent upon them, we cannot be surprised that the new movement has not at present made much progress amongst those classes. Functionaries and preferment-hunters are acting by their governments, just as the petty states are acting by the more powerful; they are 'waiting upon Providence,' and will believe or disbelieve according to the wholesome example of their betters. Meantime, they accurately adjust their countenance by the court glass; and obliquely glancing at the royal, princely, or ducal visage, smile or frown as that appears propitious or otherwise.

But if the German Catholic community has made comparatively little progress amongst the most cultivated classes, it would be an equal error to suppose that it has gained its chief conquests amongst the very ignorant; these are well contented, for the most part, with their pilgrimage to Trèves. Its chief supporters are found amongst a very substantial, though not the highest class; in the ranks of middle life; amongst merchants and manufacturers, burghers and shopkeepers. For similar reasons it has not penetrated the rural districts to any considerable extent; it is in the populous places, and especially the Free Towns, that it most readily finds supporters. We are far, of course, from mentioning this as an unfavourable omen; no revolution was ever yet successful that did not embrace a large portion of these elements. We merely refer to it as affording one of the *criteria* for judging of the probable extent of the movement, and of its rate of progress. It clearly appears that it still has much to do before it can be said in any sense to be *national*.

Another circumstance which has struck many writers as unfavourable, is the non-appearance, at least as yet, of adherents of such commanding vigour of intellect, extensive knowledge, and weight of wisdom, as shall insure the new community effective leadership, and whose very names shall be 'a tower of 'strength.' Ronge and Czerski are certainly both, in many respects, remarkable men; but they have not hitherto exhibited qualities which would entitle their names to be mentioned in the same rank with any of the great reformers of the sixteenth century,—with Luther, Melancthon, Zwingle, or Calvin.

Another circumstance, which, as time rolls on, may have a further tendency to limit the movement, will be the pecuniary sacrifices to which its adherents must submit; and to which the Germans are not quite so much accustomed as large bodies of our own countrymen. They can hardly expect state endowments; and they can as little expect the transfer of existing church property,—unless, as at the Reformation, they can induce the Roman Catholics in some states to renounce Rome *en masse*. Now the maintenance of a church is an expensive thing, as the praiseworthy efforts of large bodies of British religionists can testify. The question is, whether German piety is *at present* equal to this effort? On this subject, Dr Ullmann makes some very forcible remarks, which we regret that we have not space to translate, (p. 34, 35:)—'A main point,' says he, 'is 'the—money. (*Ein Hauptpunkt sind die Geldmittel.*) A church 'with its correspondent collegiate institutions is an expensive 'business.'

Owing to the causes we have specified, and some others we have not touched, many think, that though the German Catholic Church will succeed in gaining a permanent footing, its progress will not be proportional to the present enthusiasm; that the limit of its activity will soon arrive; that the *momentum* with which it was projected will not, under all these retarding causes, be very long maintained. All such conclusions appear to us very uncertain. Mr Laing even goes so far as to say, that the movement 'is a blow' to the Romish Church, 'but the blow 'of a child, without force, energy of purpose, or right direction.' He founds his judgment in a great degree on the sinister influence of the German governments, and the social and political condition of the people. He denies the existence of a German national spirit, and ridicules accordingly the appeal to it, on the part of the 'German Catholic Church.' 'If,' says he, 'as 'Ronge proposes in his address, the German nationality is to be 'its mother, it is of premature birth, for it has come into the 'world before its parent.'

We do not deny that there is force in Mr Laing's remarks on these subjects. But we are far from conceding that there is such a close connexion between the political condition of a people, and the success of any revolution like the present, that the one shall be determined by the other. Governments and their subjects, at the time of the Reformation, were certainly in a far more unfavourable position, viewed politically, than at present—yet this did not prevent the Reformation; and history assures us, that similar changes of religious sentiment may take place even under the most diverse political relations. There is a connexion,

no doubt, between the two. The form of polity will greatly modify such revolutions, and may either retard or accelerate them. But whether any government can frustrate them or not, will depend entirely on the degree of intensity, and the extent, with which the feelings which prompt them may have penetrated the people. Whether popular feeling in Germany be sufficiently strong to neutralize all such opposition—to bear the resistance of hostile, or overcome the *vis inertiæ* of indifferent governments, may be a question; or whether it will attain such a degree of strength in the course of the further evolution of the movement, remains to be seen. All judgments on this point we hold to be premature.

A similar fallacy is, in our opinion, to be found in Mr Laing's inferences from the absence of a *national* spirit in Germany. In one sense the Germans certainly have very little of this spirit, but in another sense they have a great deal. Indifference or apathy in reference to a nation's own rights, is surely compatible with the most vivid abhorrence of a foreign yoke, and attachment to its own soil and institutions, even when those institutions are detestable. There is not a nation in Europe which has *this* species of patriotism more intense than the Russians, to whom the very existence of national spirit, in our sense of the word, is unknown. In like manner, whatever may be the German phlegm with regard to the character of their own governments and their personal freedom, they have, and always have had, a deep and extensive jealousy of Ultramontane influence and pretensions. It is with a man and his country as with a man and his wife. They may wrangle all day long, and yet the interference of a third party shall instantly draw upon him the resentment of both.

The German jealousy of Rome is not a thing of yesterday; it has been more or less prevalent ever since the days of Luther—nay, was prevalent even earlier; and it has been recently excited anew, by the efforts made by the adherents of Rome to gird the chain tighter, and to make the yoke heavier. If there is one fact clear from the statements of writers on the subject, it is the recent attempt of Rome to revive the authority of the ancient Church, and the resentment of a large portion of the people in consequence.

All depends, we repeat, on the degree in which feelings of this nature have penetrated the bulk of the people, or shall do so, as the movement developes itself. If such feelings should attain certain strength, all the obstacles we have mentioned will disappear. Governments will acquiesce—latent energy equal to the crisis will be evolved—funds will be raised—and every obstacle yield as usual to that irresistible thing—the WILL OF A UNITED PEOPLE.

Meantime there are two points which are already certain, and

on which we need not wait for further evidence to speculate. *First*, The movement will be, whether extensive or not, permanent. There is another limb, whether it shall prove a finger or leg we know not, lopped off the Romish colossus. The whole history of the secession—its decision and promptitude,—shows that conciliation is out of the question; the alienation is too deep to admit of any thought of it. And its partisans also are sufficiently numerous to propagate it.

Secondly, and this is scarcely less important. It will be a lesson to Rome how she makes rash experiments for the restoration of her antiquated claims of high-church authority, and implicit obedience. Many of her adherents dreaded the recent experiment of Bishop Arnoldi, and now, that it is too late, vainly express their regret. It has ended, as all such efforts to turn back the tide of history must end; much as somewhat similar events have ended at home. The reaction against Oxford has come at last; and the like reaction against Jesuitism has come in Germany.

'The Ultramontane movement in the Catholic Church,' says Mr Hauber, 'has had an uncommonly speedy course. Revived only a few years ago, it has already passed through all those stages which in reality took the Romish system more than as many centuries to traverse. It has its fathers, its apologists, its proselytes, its poets and orators, its miracles, its pilgrimages and indulgences, and now at last—its reformation.'*

Dr Ullmann even speculates on the possibility of Rome's undertaking a voluntary reformation in consequence of this warning; and the passage is so eloquent, that we wish we could find space for it.

For our own parts, we doubt whether any spontaneous reformation of Rome can be any other than nugatory. As Dr Ullmann himself remarks in another passage of his *Bedenken*, 'The doctrine and the hierarchy in the system of Catholicism 'do not admit of separation—both together form an organic 'whole; the Church, the Hierarchy, the Pope himself, are doc-'trines—and indeed highly significant doctrines.'†

This is truth, and all history proves it. We find that so inseparable is the connexion of the most obnoxious doctrines of Rome with papal power, that no attempt she has made at reformation touches one of them; whereas, on the other hand, wherever a reformation is effected, which commences with renouncing her authority, whatever the form of Church polity—Episcopal, Lutheran, Presbyterian, or what not—all those doctrines which are most to be dreaded go at once—transubstantiation, auricular confession, service in an unknown tongue, communion in one kind, purgatory, and the celibacy of the clergy—all those, in

* P. 48. † P. 12.

fact, which the German Catholics have denounced, as did Luther before them.

We cannot conclude this article without a few remarks on two not unimportant topics.

The first relates to the spirit in which German Protestants have regarded this singular manifestation; and which we cannot say has been *always* that spirit of sympathy and charity which we should naturally have expected towards men, who, whatever appellation,—such as 'the German Catholic Church,'—they may adopt, or however deficient or ill-defined may *at present* be their system of positive doctrine, are yet literally Protestants, and are strenuously fighting the battles of Protestantism. All the corruptions of the Romish Church, which the Reformers denounced, the followers of Czerski and Ronge have denounced also. For this, we contend, they deserve and demand the respectful sympathy of all their Protestant brethren, and the exercise of patience towards them while they are yet struggling towards a fuller light. This sympathy and this patience, we cannot say that we have always observed.

A certain unfriendly prejudice appears in the writings of many of the German Protestants in relation to German Catholics; and from this prejudice even Dr Ullmann and Mr Hauber do not seem entirely free. Bauer complains strongly of a hostile spirit in the more orthodox quarters. We admit that there is some ground of jealousy, from the indefinite form of doctrine adopted by the new church, and the fear of its ultimately leading to an indiscriminate jumble of all modes of belief and misbelief;—in other words, to a heterogenous pile of all orders of ecclesiastical architecture, in which *indifferentism* (as the Germans call it) shall be the only creed, and a spurious charity exclude a hearty and conscientious regard for truth. But this fear (laudable in itself, yet we trust not warranted by the *general* complexion of the materials of which the new community is composed) does not account for the whole of the jealousy felt; and still less for the uncandid, captious, and bitter tone adopted by some writers; whether it be from a jealousy of any reformation but their own; or from a feeling of resentment that the discontented, if they must secede, should not have seceded to their own ranks; or from a fear that the new church may gain proselytes from Protestantism as well as from Rome—of which there have been a few examples; or from a wish to monopolize the favour of government; or from a combination of any such motives, we know not;—but we have certainly observed in various quarters, a carping, hypercritical spirit, that cannot be too strongly condemned. We should rather have expected, what in many Protestants we actually find, a superiority to any such feelings, and a magnanimous

and generous sympathy and forbearance towards men who were, at all events, casting off so much of error, and were but groping for the truth. We trust that as the New Catholics come so near Protestants in so many essential points, the feelings of the two parties will not afford another confirmation of the witty assertion, that the hatred of contending sects follows the same law as the force of gravity—'increasing in proportion as 'the square of the distance diminishes.'

The second topic respects the conduct, which, in our judgment, should be pursued by the German Catholic Church itself. If on any one thing its success may be said to depend, it is on the perpetual inculcation and maintenance 'of a meek and quiet 'spirit;'—in abstaining from the very appearance of encouraging in any of its members any portion of the 'Young Germany' nonsense. It must learn not only to 'assert rights,' but, if need be, to 'endure wrongs;' and to bear persecution, if it must come, with fortitude and magnanimity. Nothing could so damage its cause as to have it confounded with that of rash innovators;—whose chief object is, after all, politics and not religion, or the assertion and realization of political theories in conjunction with religious changes, and by means of them. Let not the two things be mingled, or, at all events, let it be seen that it is not the authorities of the German Catholic Church that encourage the union. It is precisely the fear of political changes which will chiefly render the potentates of Germany jealous; and it would still render them so, even if there were no reasonable grounds for any such fear. But we cannot disguise from ourselves, that from the acknowledged, and in some quarters even *boasted*, latitudinarianism of the new church, it is likely to enrol under its banners some undesirable recruits—not a few of those young, ardent, and half-fledged minds with which Germany has always abounded;—minds eager to realize some visionary theory of a superhuman *Humanität*, and who would rashly commit any cause, however important, in pursuit of their object. This danger is particularly to be apprehended in the present condition of the Continent; in various parts of which it is strongly asserted, that associations are forming, characterised by detestable principles, and organized for nefarious objects. All this will tend to render the continental governments more than ordinarily jealous; and will consequently require unusual circumspection on the part of the founders and leaders of the German Catholic Church. They must take a leaf out of Luther's book; and believing with him that the triumphs of Christianity are purely moral and spiritual, and are to be effected by means precisely in harmony with such ends, repudiate as he did all force, except what Milton sublimely calls 'the unresistible might of weakness.'

ART. V.—*Travels in North America, with Geological Observations on the United States, Canada, and Nova Scotia.* By CHARLES LYELL, Esq., F.R.S. 2 vols. 8vo. London: 1845.

THESE volumes exhibit in a narrow compass more of the bright side of the American character and institutions, than we have discovered in the panegyrics of the most ardent Democrats who have visited the land of liberty. This effect is produced not only by the hopeful, good-humoured, and unaffected tone in which the excellent writer relates his adventures: the occurrences themselves tell their own favourable story. His popularity was not of that vulgar order, which sometimes excites the youthful enthusiasm of America to extraordinary exhibitions. He received the homage appropriate to a man of science in the crowded attendance on his Lectures, and in the eagerness with which his geological brethren of America took the opportunity of assisting and conferring with him; and, at the same time, the most agreeable treatment a traveller can experience, that of unostentatious kindness and hospitality. If science, literature, and the arts can be created by liberal patronage, America is perhaps the country to which we ought ultimately to look for their most abundant development. There exists a truly extraordinary amount of public spirit of this description among a people who are so often represented as wholly devoted to money-getting. 'Not only,' says he, 'is it common for 'rich capitalists to leave by will a portion of their fortunes 'towards the endowment of national institutions, but indivi- 'duals during their lifetime make magnificent grants of money 'for the same objects.' He informs us, that the bequests and donations made during the last thirty years in the state of Massachusetts alone, for the benefit of religious, charitable, and literary institutions, amounted to not less than a million sterling;—Massachusetts, be it remembered, containing about one-sixteenth of the population of England, and probably a much smaller proportion of wealth. In fact, as it is a characteristic of American energy to expend profuse labour to obtain immediate results, it may be doubted whether here—where results, to be valuable, must needs be slow—the work has not rather been overdone; and whether the great forcing power of institutions, universities, and lectureships, where thorough education is of necessity rare, may not have a tendency to bring forward a good deal of superficial knowledge and indifferent taste. But these are temporary evils. The weeds, if rank, are shortlived,

and the same influences will ultimately raise to maturity the better seed. Among the educated of the labouring classes, attendance on cheap lectures is a favourite relaxation: they are by no means particular in their choice of subjects, and some readers may smile, though Mr Lyell himself speaks with becoming seriousness, when he encounters a carpenter in a little New England town, on his way, after his day's work, to hear a lecture 'on the astronomy of the middle ages.' This miscellaneous appetite for information may partake of that childishness of mental character which some attribute to a people who learn much and rapidly, but want opportunity to perfect their education. But the book-devouring, indiscriminating schoolboy often makes the most learned man. Let the appetite once exist—let it be encouraged by that supply of knowledge which American munificence ensures—and we look forward with perfect confidence to the time when genuine philosophy will supersede the follies and quackeries in vogue. And thus those citizens who have set examples of high public spirit—such as we in England, who have some right to boast of that quality, should find it hard to match—will ultimately attain the full aim of their generous sacrifices.

The main object of Mr Lyell's journey was to observe and collect materials in his own chosen pursuit; and although he travelled with eyes open to other besides geological knowledge, and noted down, as the occasions fell in his way, his impressions on the social and political state of things, he returned from such digressions with evident preference to his favourite earth, and acquired new strength by again embracing her. We cannot here discuss the scientific questions raised in his work; and we shall make no apology for accompanying him at once from the cities and densely peopled regions of the Republic, to those less frequented regions into which he was led by his spirit of geological enterprise.

He arrived at Boston in the summer of 1841; and after visiting the Atlantic cities, and taking the ordinary run to Niagara and back, set his face, in the middle of winter, towards the south, to study an extensive region very little visited by ordinary travellers. South of the Chesapeake, there extends from the Alleghany mountains to the sea a country of plains, increasing in width as the mountains recede further and further from the sea, in their south-westerly prolongation. To the west, it rises into a 'rolling,' or hilly tract: on the east, it is fringed by the marshes of the sea-coast. The soil rests on the hypogene formations, granite, gneiss, &c., but these are extensively covered by tertiary deposits of sand and clay. These strata have only

recently emerged from the ocean, and the whole district appears to be again undergoing the process of depression; the sea rising higher than formerly along the coast. Far and near, the general aspect of the country is that of one vast pine forest. 'The pine barrens, on which the long-leafed or pitch pines 'flourish, have for the most part a siliceous soil, and form a 'broad belt many hundred miles in length, running parallel to 'the coast, in the region called the Atlantic plain. The pine 'barrens retain much of their verdure in winter, and were inte-'resting to me from the uniformity and monotony of their 'general aspect; for they constitute, from their vast extent, 'one of the marked features of the geography of the globe, 'like the Pampas of South America.'

These vast regions of pine barren, interspersed with swamp, have been as it were left behind, untouched, in the march of European settlement. The imagination ordinarily represents to us the spread of population in America as a gradual process,—regular as the advance of the tide over sands, slowly covering the uninhabited earth, and moving on at a rate capable, as it were, of measurement; so that at each stage of its progress a line of demarcation might be drawn between the peopled land and the desert. No idea could be more fallacious; and it is worth while, from the mere interest of the subject, to attain a correct idea of the manner in which the greatest social phenomenon of modern ages, the peopling of North America, is accomplished; even independently of its important bearing on the political problem of the destiny of the Republic.

This notion of a gradual and steady advance, now altogether unfounded, pretty correctly represented the real state of things, from the first plantation by the English, nearly to the American war. In the oldest colonies—New England and Virginia—the population at first increased rapidly on a limited extent of land. This might be partly owing to the communal habits, if we may call them so, which still lingered in the mother country; the old village life was not yet fully superseded in England; and the old settlers thronged together in small parochial communities. Probably it was still more caused by the prevailing dread of the Indians, who hemmed in the young colonies, and effectually checked the love of emigration by cutting off stragglers from the main body; and by the unsettled ownership of the frontiers, as between European powers. It is curious to observe how, with regions of boundless fertility within their reach, the descendants of the Puritans toiled and multiplied, generation after generation, within the narrow boundaries and on the ungrateful soil of the older New England states. There

was nothing then of that propensity which forms the groundwork of the 'Wakefield theory' of colonial human nature;—no eagerness to abandon old land for new. In the colony of Connecticut, the Governor was of opinion, in 1682, that all the land which was 'fit,' had been 'taken up' already. Connecticut had then only 10,000 inhabitants. A hundred years afterwards, it contained 300,000;—all subsisting on that soil which the Governor had so early represented as fully peopled. The three states of Massachusetts, Rhode Island, and Connecticut, now only 200 years old, are as densely peopled as Old England was six centuries after the Norman conquest. The curses and the blessings of age are already upon them. Manufacturing and commercial interests are beginning to surpass the agricultural in importance. The fortunes of the yeomanry are 'sensibly lowering;'—less, probably, in absolute than relative amount. They are said to be mortgaged, too, as deeply as those of English nobles of twenty generations. Nature is beginning to lose her youthful aspect. The wild animals are gone; the forests which sheltered them, are disappearing. 'In the neighbourhood of 'Durham,' says Mr Lyell, 'we learnt that a snow storm, which 'had occurred there in the first week of October, had seriously 'injured the woods, weighing down the boughs then in full leaf, 'and snapping off the leading shoots. For the first time in 'the United States, I heard great concern expressed for the 'damage sustained by the timber, which is beginning to grow 'scarce in New England, where coal is dear.' Even the abundant waters of the wilderness are diminishing; and the streams flow scantier and more sluggish, from the destruction of the cover which once sheltered their springs. Yet, to an observer accustomed to the aristocratic institutions and monumental wealth of Europe, the New England states look less like old societies, than young ones which have 'lived fast,'—presenting so many of the outward signs of an advanced stage of progress, but without an old building, an old family, or an old estate.

It was not until about the close of the struggle between France and England for the sovereignty over the unpeopled basins of the Mississippi and St Lawrence, in the middle of the last century, that the population of the English provinces began to expand out of all proportion to the limits which contained it. As soon as the country west of the Alleghanies attracted settlers, the regular progress of plantation in the Atlantic region was altogether interrupted. Men became fastidious in their choice of settlements, and began to pick out the daintiest parts of the vast carcass of a continent which lay exposed to their appetite, regardless of the large portions they left untasted.

The inferior lands of the eastern states remained in a state of nature; especially in the slave states, where population has crept slowly along the banks of the rivers, on the low eastern seaboard, favourable to the growth of cotton, and in the valleys of the Alleghanies, which present the most desirable abode for a white population;—leaving the wide intervening plains and pine forests altogether without inhabitants. Of course this progress of events, in the main, was and is the most favourable to the increase of general wealth; yet this truth must be received with some qualification. The habit of emigration is apt to become too powerful even for self-interest. Among the many thousands who annually penetrate beyond the Mississippi and the lakes, it is impossible but that numbers must sacrifice that capital, as well as health and time, in the romantic search for a new home, which might have been profitably employed in reclaiming the wide and empty regions left behind. New York is one of the most fertile, as well as the oldest states of the confederacy. Yet from Albany to Niagara, the railroad still runs in general through 'dense forests, with occasional clearings.' On examining the map of the States, two great lines of communication may be descried diverging from the Hudson,—the one westward to the great lakes, the other northward by Lake Champlain to Lower Canada; both are as thoroughly beaten—almost as well provided with the appliances of civilization—as the most frequented routes of the old world; yet between these and the St Lawrence lies a mountain region as large as Wales, full of fertile valleys and rich slopes, which is utterly uncultivated and almost unknown. It was explored for the first time in 1837, by the engineers employed on the State Geological Survey. 'They had recourse to Indian guides in a 'pathless wilderness: encountered bears and moose deer; found 'the beaver still lingering in some streams; saw lakes before un-'described; and measured the height of mountains for the first 'time.' They reported that it is a land affording the greatest attraction for emigrants. And this lies waste, while thousands are said to be preparing for the march to Oregon; that is, for many months' journey across snowy mountains and barren volcanic plains, with no more enticing prospect in view than the cultivation of a few indifferent acres, under a climate of six months' rain; and the proud reflection that there is no 'farther west' to subdue.

'Hic stetimus tandem, nobis ubi defuit orbis.'

The general result of this tendency to dispersion is, that there are large portions of the Union in which the advance of society

seems either stopped or suspended. Along the whole Atlantic seaboard, between the Alleghany mountains and the ocean, from the state of New York to Florida, the population, for the last twenty years, has been very nearly stationary: its wealth, probably, has diminished. Nor does this decay proceed simply from the circumstance of new clearings not taking place; there is an extensive abandonment of old ones. This curious fact in American economy has been much remarked upon of late years. Mr Buckingham saw, along the banks of the James river, whole ranges of decaying mansions and deserted plantations, once the seats of the local aristocracy of the times of the Stuarts. 'From the deck of 'one of the steam-boats on the Potomac,' says Mr Lyell, 'we saw 'Mount Vernon, formerly the plantation of General Washing-'ton. Instead of exhibiting, like the farms in the northern states, 'a lively picture of progress and improvement, this property was 'described to me by all as worn out, and of less value now than 'in the days of its illustrious owner. The bears and wolves, they 'say, are re-entering their ancient haunts, which would scarcely 'have happened if slavery had been abolished in Virginia.' Probably not; undoubtedly, the abandonment of old land is much promoted by the system of slavery—agriculture under it requiring much capital, and being subject to a wasteful expenditure, the competition for newer soils is the more forcibly felt. But the same thing happens elsewhere. In Delaware, which is not a slave state, the population has not increased for thirty years; and much of the land is said to be worn out.

Steam navigation, the first birth of this century of prodigies, undoubtedly promoted, to a great extent, this tendency of the population to disperse. And it seems most probable that the invention of railroads will form another and a most effectual step in the same direction. If so, incalculable as the advantages are which a country circumstanced like America derives from railroads, this result will form a considerable item in the opposite balance. It has been repeatedly observed, that the want of fixity in the population, is one of the most powerful promoters of the low civilization and loose morality characteristic of so large a portion of the society of the Union. While, in this country, hundreds of thousands are wasted in debating the question,—whether a line of an hundred miles direct will pay better, and serve more purposes, than a line of a hundred and twenty miles passing through five or six market towns;—in America, these gigantic levellers of time and space traverse vast districts in a straight line from point to point, and, instead of winding about in search of traffic, wait till time shall bring towns and settlements to them. In fact, the railroad system seems peculiarly adapted for two very differ-

ent states of society;—in limited districts, inhabited by a dense and industrious population, where any discovery which renders more speedy and regular the already easy communication from place to place, is an additional saving of time and of capital—an additional advantage gained in the ceaseless struggle of competing industry; and again, in vast regions only here and there dotted with settlements, where modes of communication are rather matters of vital necessity than of mere gain or convenience. Mr Lyell went from Charleston 'by an excellent railway, one 'hundred and thirty-six miles through endless pine forests, to 'Augusta, in Georgia. This journey, which would formerly 'have taken a week, was accomplished between sunrise and sunset; 'and as we scarcely saw,' says he, 'any town or village, or even a 'clearing, nor any human habitation except the station-houses, 'the spirit of enterprise displayed in such public works filled me 'with astonishment, which increased the further I went south.

It is vain to speculate on the embryo causes which must one day check this nomade propensity, as well as that spread of slavery with which it is too intimately connected—so immeasureable does the unoccupied field still appear. The future is dark indeed; and he who expects to see either evil exhaust itself by its own progress, may have to wait till the rich prairies of Texas, and the still more luxuriant forests of California, swarm with population; till the Rocky Mountains are traversed by grand-junction railways from the Pacific to the Atlantic; and till the unhappy Mexicans are driven within the narrow limits of their isthmus, south of the arid deserts of Sonora and Durango. Meanwhile, it seems certain that there can be no material advance in the higher departments of national civilization—that the national mind can acquire no firmness of tone and dignity of character—while these unfavourable elements continue to develope themselves with increasing strength. The backwoodsman, and the slave-owner too, may have merits of their own; but they are not exactly the characters which communicate habits of refinement, or of sterling industry and morality, to a population. The great cities are the civilizers of America, as they were of Europe in the middle ages, though from very different causes; the influences which spring from them have to struggle with the general tone of society without,—a struggle in which the banner of progress appears for some time past to have been giving way before that of barbarism; in which the prevalence of the coarser element tends to keep the grown intellect of the country down to the level of childhood; and its public morality down to the lowest standard compatible with the preservation of society. But there is no general advance for

mankind, except by a series of oscillations; and perhaps the tide is already on the turn.

Amongst all the unfortunate arguments by which Americans have defended their tariff—amidst all the futile endeavours to show that a country may become richer by forcing capital from more into less productive occupations—we have often wondered that the political ground for defending it has been less prominently urged;—its tendency, in the limited degree in which commercial laws can affect the progress of society, to keep together a certain portion of the population, which, under a freer system, would be scattered abroad in the general dispersion. If the tariff has really fostered manufactures, where, without it, they would not have existed—which, as a matter of fact, is very doubtful indeed—it has to that extent rescued a certain amount of capital, which would otherwise have been spread, with more abundant return, over the wild plains of Texas and Arkansas, and invested it in establishments nourishing a civic population, and maintaining the civilization of the country. It has then acted—no doubt, far from any intention of its contrivers—in sacrificing some amount of production for the sake of a more politic distribution of wealth.

Meanwhile, the condition of the planters of the lower parts of Virginia and the Carolinas, visited by Mr Lyell in this part of his journey, (the only part of the American population who present any counterpart to the character of English gentry,) does not appear to be a very enviable one. The state of society about them seems stationary; public wealth is not on the increase; still less refinement or civilization. Like our own West India planters, they have to struggle hard, we suspect, against the accumulated effects of the extravagance of more prosperous days, the competition of newer soils, and the difficulty of maintaining the necessary supply of slaves. In many parts of this region, not only the soil, but the climate appears to deteriorate: fever and ague prevail where they were unheard of a few years ago. 'When the English army,' says Mr Lyell, 'was campaign-'ing on the Cooper and Santee rivers in the revolutionary war, 'they encamped with impunity in places where it would now be 'death to remain for a few days in the hot season. I inquired what 'could have caused so great a change; and found the phenome-'non as much a matter of controversy as the malaria of Italy.' But the planters are a generous, kindly, and liberal race of men, on all occasions where the sore subject of slavery is not involved; and so hospitable, that the scientific traveller finds it prudent to have it particularly requested in his letters of introduction, that

'information respecting his objects, and facilities of moving 'from place to place, should be given him, instead of dinners 'and society.' As far as the outward appearance of things went, slavery in this part of the United States had little to hurt the sensibilities of the traveller. The negroes 'appear-'ed very cheerful and free from care: better fed than a large 'part of the labouring class of Europe; and though meanly 'dressed, and often in patched garments, never scantily clothed 'for the climate.' In many instances they keep their masters in subjection, in a manner which might teach a valuable lesson even to first-class London servants. The most autocratic coachman who condescends to hold English reins, would hardly venture to exhibit his despotism so ostentatiously as his Carolinian brethren. 'On one occasion,' says our author, 'we were proceed-'ing in a well-appointed carriage with a planter, when we came 'to a dead halt. Inquiring the cause, the black coach-'man said he had dropped one of his white gloves on the road, 'and must drive back and try to find it! He could not recollect 'within a mile where he had last seen it; we remonstrated, but 'in vain. As time pressed, the master, in despair, took off his 'own gloves, and, saying he had a second pair, gave them to 'him. When our charioteer had deliberately put them on, we 'started again.'

We must, however, in honesty confess, that we are not altogether satisfied with Mr Lyell's language on this subject of slavery. Undoubtedly the quiet judgments of his dispassionate understanding—the *mitis sapientia* of one who, without losing in scientific study his interest in political and social questions, is free from the heat and mist which these engender in minds without subjects of purer and calmer contemplation to steady them—are far more valuable than the bluster of one class of travellers, and the sentimentalism of another; but it is precisely for this reason that we wish he had spoken more freely. For his views on all these matters are in our opinion sound and right; we only question whether he is not more chary of expressing them, than any writer who touches at all on that tremendous subject ought to be. No one would expect from him the unmeaning and indiscriminate abuse of Americans, as Americans, which is so often heard in connexion with this subject. Once for all, it is not our own ten or twelve years of emancipation—an emancipation carried through against the will of the planters, and no less against the long opposition of the Church and Aristocracy at home—which entitles us to assume the tone of indignant virtue. There is scarcely a single atrocious law, or a single hard-hearted usage in the slave-states of America, which

has not its parallel in our own colonial history; scarcely one which our own planters would not have retained, if they had not been compelled to abandon them by the force of public opinion at home. All this may be humiliating, but it is true; and if we are told that the English planters were nevertheless an honourable and right-thinking race of men, we reply, so much the more apology for the Americans. But the inherent atrocity of the system—no matter by what nation maintained—the sickening tyranny of its legislation, and the usages which have grown up under it;—surely these are things which admit of no palliation or soft speaking, if they are to be spoken of at all. The question of emancipation in America is attended, it is said, with enormous difficulties: be it so—is that any reason for disguising the plain fact, that without emancipation there can be neither internal peace, nor happiness, nor civilization, for one half of the Union, nor harmony between that half and the remainder? Why repeat, as Mr Lyell does, except to expose their fallacy—which he does not—the shifts to which slave-holders naturally enough have recourse in argument, but which cannot for a moment impose on a dispassionate observer? They ask perpetually for 'time;' but what use is made of it? If legislation is becoming more and more unchristian and inhuman,—if the black population is more and more degraded by every successive change in its civil *status*,—to what account are these masters turning the space which the cowardice of man, and the long-suffering of heaven, allow them? But then, this is all the fault of the abolitionists and their movement. Indeed! we have yet to learn that a single step was ever taken in any country, for the advantage of the unhappy victims of white avarice, except through the means of similar agitation,—whether the agitators were bishops and monks, as in the old Spanish times, or Quakers, Baptists, and philosophers in our own. The planters, says Mr Lyell, 'complained 'much to me of the manner in which the escape of runaway slaves 'was favoured in the free states. Their innocence, they said, is 'always assumed, and the cruelty and harshness of their owners 'taken for granted; whereas the fugitives often consist of good-'for-nothing characters, who would have been put into jail in 'Europe, but who here are left at large, because their masters 'are unwilling to lose their services by imprisonment while they 'are compelled to support them.' That is—if it is meant to found any general reasoning on this complaint—the planters would have us believe that well-conducted men have no desire to escape from a condition in which their marriage is concubinage; their children strangers; their persons liable to all the caprices of indulgence or cruelty;—in which it is no exaggeration to say,

that the more utterly they renounce all that characterises man, and content themselves with eating, drinking, and toiling like the domestic animals, their fellow servants, the better they fulfil the purposes for which they are kept in being; that those who are perverse enough to break loose from the pleasing chains of this domestic 'institution' are presumably thieves and vagabonds! If this were true, it would be a heavier imputation on those who have reduced the negro to such a state of bestial apathy, than the worst that abolitionists can urge against them; but we disbelieve it. The conduct of the numerous runaways who have found an asylum in Canada affords, we imagine, a more than sufficient answer to the charge.

Mr Lyell's next excursion from Boston, which city appears to have constituted his general headquarters, led him across the Alleghanies into the western part of the state of Pennsylvania. These mountains form another great natural feature of the Union. They extend from the Hudson almost to the Mississippi, in a series of parallel lines or ridges, resembling, to a certain extent, the disposition of the Jura range in Europe, though very different in structure. These ridges rise with singular continuity of elevation, like a series of 'gigantic folds or wrinkles, 'along the surface of the earth;'—a comparison which seems peculiarly appropriate when it appears, on geological investigation, that they *are* literally 'gigantic folds or wrinkles.' Mr Lyell attributes this peculiar formation to volcanic action from below, operating in a line or direction parallel to the present ridge, and thus upheaving the strata; and it appears that in the south-eastern parts, dykes of igneous rock sometimes extend for many miles parallel to the same direction. Whatever be the cause, it necessarily renders the scenery of the Alleghanies, 'in general monotonous, 'the outline of each long ridge being so even and unbroken, and 'there being so great a want of a dominant ridge.' But it is a splendid monotony; that of majestic, solitary nature. The ridges are every where covered with the virgin forest;—in Pennsylvania so densely, 'that the surveyors were obliged to climb up to the 'tops of trees, in order to obtain several views of the country, 'and construct a geographical map.'

The valleys of the Alleghanies, in Pennsylvania, and the adjacent parts of the neighbouring states, are occupied in a great degree by those colonies of German emigrants and their descendants, which form so curious a variety amidst the restless American population sweeping past and around them. They are strengthened by the continual arrival of recruits; for few are aware of the great extent to which annual emigration takes place from Germany to the United States; especially from Wir-

temburg and its neighbourhood. They appeared to Mr Lyell 'industrious and saving, very averse to innovation, but certainly 'wanting in that habit of identifying themselves with the acts 'of their government, which can alone give to the electors under 'a representative system a due sense of responsibility.' That is to say, they have been in the habit of resisting every attempt to make the States they inhabit pay the interest of their debts; and their obstinacy was, as the Americans assert, the main cause of the long suspension of dividends by Pennsylvania. Mr Lyell 'felt inclined to believe, that as soon as these Germans were 'convinced that they really owed the money, they would pay it.' If a German Sydney Smith were possible, such a phenomenon might here be of signal service. But they must be a difficult race to argue with. The most characteristic anecdote we ever read of these worthy Swabians, was in the work of their countryman, Ernest Grund. A detachment of emigrants, in the joy of their enfranchisement from the endless vexations of petty German government, and the host of small officials (*schreiberle uriterlings*, as the south Germans call them) who worried them to death with the points of their pens, enacted it as the first by-law for the regulation of their community, that no one should be permitted to learn reading and writing!

Descending the western side of these mountains, Mr Lyell crossed the Apalachian coal-field—one of the largest in the world, and destined apparently to be one of the most productive. It is already found worth while, he says, to supply the steamers of New Orleans, 1100 miles distant, with coal from Pittsburg. He and Mrs Lyell, the partner of all his travels, descended the Ohio to Cincinnati, and from thence crossed the State of Ohio to Cleveland in Lake Erie,—an adventurous journey, to be accomplished in American stage-coaches by a British lady. But whatever the accommodation in other respects may be, Mr Lyell asserts, that in no single instance had he or his companion occasion to complain of any discourtesy or want of attention.

This state of Ohio is the most wonderful of all transatlantic wonders in respect of rapid progress. It was a territory with forty thousand inhabitants in the year 1800; it is now a republic with two millions of citizens—as many as those of Venice or the United Provinces in their proudest days—with a profusion of agricultural wealth almost outrunning the need of all available markets; without slaves, and paying her dividends. And there is room for millions more; for the whole state is one rich tract of undulating plain, covered from end to end with the finest forest trees of America, and intersected by navigable waters. Its natural resources are practically unlimited, and yet Ohio forms only a

small section of that vast region sloping from the Alleghanies to the Mississippi, which is almost every where equally productive and equally accessible.

The full peopling of this Mississippi valley—an event not very far distant—will constitute, perhaps, the most important passage in the social history of man. Civilization commenced in nooks and corners of the earth; where seas, mountains, deserts, afforded shelter to communities struggling for growth against the bleak winds of surrounding barbarism. Egypt, Phœnicia, Greece, the islands and coasts of Italy, were thus, one by one, placed at the head of the movement in the western world;—each, as it were, a separate spot of firm ground, the dwelling of intellect and art, and of the science of law and order, amidst the wild chaos of the yet void and formless continents. Slowly and timidly did civilization relinquish these fortresses, and spread over the neighbouring plains. And even in the latest periods of history, Venice needed her lagunes, Holland her dykes, England her ocean, to secure the growth of those principles of government, industry, and freedom, of which they have been the appointed nurseries. And hence it grew up as a fixed opinion among politicians, first, that free institutions could only flourish in countries of a limited extent and population; secondly, that the energy and action, even of despotic governments, were weakened by extensive dominion. The present century, so fertile in new circumstances and new ideas, has developed new principles of human society in this respect also; and the politicians of our generation must prepare to go to a school in which the maxims of Machiavel and Montesquieu must be to a certain extent obsolete, like those of Plato and Aristotle. We must accustom ourselves to the contemplation of space and numbers as the greatest future elements of political greatness. With war reduced to an art of rapid and decisive results; with the internal communications of peace so multiplied and improved, that the same social relations will subsist between kingdoms as now subsist between provinces of the same kingdom, while provinces become as parishes—no civilized nation can long keep its knowledge, its habits, its industry, its very spirit to itself; all will be sections of a great whole, between which relative size and population will form the principal distinctions. Nor will there be any practical limits to the extension of Empire. Steam will render the action of government on all parts of the political body, in ordinary times, immediate and certain; and thus secure centralization and unity. Steam will render the action of the people on the government, in great emergencies, irresistible; and thus secure freedom, if the people are true to themselves. Let

us remember, that with little increase of our present mechanical facilities, thought might be transmitted from one extremity to the other of a state as large as the old Roman empire in a few minutes, and troops dispatched in very few days; and it will be seen at once how absurd would be the application of political ideas formed in the infancy of society, to this its stage of new and portentous advance. These are not, perhaps, very attractive speculations; they disturb old and favourite associations; they seem to reduce many cherished traditions, much painfully acquired knowledge, to obsolete lore; but these things are so, and we must accustom ourselves to regard them and their consequences without shrinking. If the Americans preserve that tenacious spirit of unity which has hitherto so singularly characterized them in all their career of aggression, occupation, and annexation, it is impossible to over-estimate the greatness of their future.

Meanwhile, these virgin regions are not very tempting even to the scientific, still less to the picturesque traveller. From the Alleghany range to the Mississippi the country is almost entirely occupied with the formations of the age of our Devonshire, South Welsh, and carboniferous groups. But these, instead of being highly inclined, as in England and the rest of Western Europe, forming hilly or mountainous tracts, lie, as in Russia, nearly horizontal, and covered with superficial drift;—constituting vast plains, where, as in Russia, the noble rivers form the only striking feature which the country in general presents.

Generally speaking, our ideas of the antiquity of these primeval forests are overcharged. Probably the rankness of vegetation itself prevents the trees in general from attaining a great age; they destroy each other.

'I amused myself,' says our traveller, 'by counting the rings of annual growth in these trees, (at Bath, in the western part of New York,) and found that some had been only forty years old when cut down; most of the older stumps went back no further than two centuries, or to the landing of the pilgrim fathers, some few to the time of Sir Walter Raleigh, and scarcely one to the days of Columbus. I had before remarked that very ancient trees seemed uncommon in the aboriginal forests of this part of America. They are usually tall and straight, with no grass growing under their dark shade, although the green herbage soon springs up when the wood is removed, and the sun's rays allowed to penetrate.'

In this great expanse of uniform plain, where the continuity of strata is little interrupted, and the surface covered generally with drift and detritus, the deep-cut banks of the rivers furnish to the geologist the principal index to the contents of the interior; and this particularly where they form cataracts—those peculiar

features of countries of level strata of alternate hardness and softness. Niagara is a 'chronometer,' as Mr Lyell calls it; but a most obscure one, which it requires much persevering attention as well as much caution to read rightly; for in no province of science are first impressions so deceitful as in geology. Mr Lyell, as our readers well know, has impressed that science with the stamp of his own original ideas;—ideas which were received at first with little favour, but which have gradually triumphed, and are still in the course of triumph, over opposition. And we have observed, that even those who still refuse to admit as a general proposition his theory of the production of geological effects by gradual changes, such as are now in operation, seem insensibly to yield to it in detail; and adopt almost unconsciously its language and mode of reasoning. The following is a brief outline of his interpretation of this great historical monument.

The region of the Lakes rests on the older stratified rocks;—those of which the representatives in England were formerly called 'transition' and 'carboniferous.' These he supposes to have remained, 'nearly undisturbed and horizontal, from the era 'of their formation beneath the sea, to a comparatively modern 'period,' during which they slowly emerged. An era of depression succeeded, during which the strata were again as slowly submerged, and became covered with marine drift of stratified and unstratified sand and gravel. This period was, geologically speaking, very modern; 'for the shells then inhabiting the ocean, 'belonged, almost without exception, to species still living in 'high northern, and some of them in temperate latitudes.' The next change, Mr Lyell continues, 'was the re-emergence of 'this country, consisting of the ancient denuded rocks covered 'indiscriminately with modern marine drift. The upward move-'ment by which this was accomplished, was not sudden and instan-'taneous, but gradual and intermittent; the pauses by which it 'was interrupted, are marked by ancient lines, ridges, and terraces, 'found at different heights above the present lakes;' such as the well-known 'ridge road of Lake Ontario,' and 'lake ridges' of Erie. As soon as the table land between Lakes Erie and Ontario emerged and was laid dry, the river Niagara came into existence;—the basin of Lake Ontario still continuing to form part of the sea, into which the river fell by 'a cascade of mode-'rate height' at Queenston, seven miles from the present falls. From that time the cataract has gradually receded to its present site;—during a period of ages, in the earlier part of which the upheaval must have continued until Ontario was raised to its present level above the sea. What was the length of this period, the last geological *æculum* of this region? That

Niagara now recedes is clear. The falls are already altered materially in shape, perhaps in height, since Father Hennepin, whose account Mr Lyell cites, visited them in 1678. (Mr Lyell, by the way, speaks of the falls as having been seen by no European traveller before Hennepin: we suspect he is mistaken here; the French of Canada had penetrated to the upper lakes before that time, and we think the falls were described as early as 1658. Nor does he seem to be aware, that as regards veracity Mendez Pinto was but a type of Father Hennepin.) The present rate of retrocession has been estimated at a foot a-year. At the same rate, the fall would have cut its way from Queenston upwards in 35,000 years. But we cannot assume this identity of rate. The recession now takes place by reason of the escarpement of the waterfall being composed of hard limestone above, and soft clay below. The boiling of the vast whirlpool wears away the clay basement; and the undermined limestone falls from time to time in fragments into the abyss. But between Queenston and Niagara various strata are cut through by the river; and 'at every step in the process of excavation, the height 'of the precipice, the hardness of the material at its base, and 'the quantity of fallen matter to be removed, must have varied. 'At some points it may have receded much farther than at pre-'sent, at others much slower; and it would be scarcely possible 'to decide whether its average progress has been more or less 'rapid than now.'—

'The principal events enumerated in the above retrospect, comprising the submergence and re-emergence of the Canadian lake district and valley of the St Lawrence, the deposition of fresh water strata, and the gradual erosion of a ravine seven miles long, are all so modern in the earth's history as to belong to a period when the marine, the fluvintile, and terrestrial shells were the same or nearly the same as those now living. Yet if we fix our thoughts on any one portion of this period—in the lapse of time, for example, required for the recession of the Niagara from the escarpement of the falls—how immeasurably great will its duration appear in comparison with the sum of years to which the annals of the human race are limited! Had we happened to discover strata charged with fluvintile shells of recent species, and enclosing the bones and teeth of a mastodon, near a river at the bottom of some valley, we might naturally have inferred that the buried quadruped had perished at an era long after the canoes of the Indian hunter had navigated the North American waters. Such an inference might easily have been drawn respecting the fossil tusk of the great elephantine quadruped which I saw taken out of the shell-marl in the banks of the Genesee river near Rochester. But fortunately, in the Niagara, we may turn to the deep ravine, and behold therein a *Chronometer* measuring rudely, yet emphatically, the vast magnitude of the interval of years which separate the present time from the epoch when the Niagara flowed

at a higher level several miles further north across the platform. We then become conscious how far the two events before confounded together, the entombment of the mastodon, and the date of the first peopling of the earth by man, may recede to distances almost indefinitely remote from each other.

'But however much we may enlarge our ideas of the time which has elapsed since the Niagara first began to drain the waters of the upper lakes, we have seen that this period was one only of a series all belonging to the present zoological epoch, or that in which the living testaceous fauna, whether fresh water or marine, had already come into being. If such events can take place while the zoology of the earth remains almost stationary and unaltered, what ages may not be comprehended in those successive tertiary periods during which the flora and fauna of the globe have been almost entirely changed! Yet how subordinate a place in the long calendar of geological chronology do the successive tertiary periods themselves occupy! How much more enormous a duration must we assign to many antecedent revolutions of the earth and its inhabitants! No analogy can be found in the natural world to the immense scale of these divisions of past time, unless we contemplate the celestial spaces which have been measured by the astronomer. Some of the nearest of these within the limits of the solar system, as, for example, the orbits of the planets, are reckoned by hundreds of millions of miles, which the imagination in vain endeavours to grasp. Yet one of these spaces, such as the diameter of the earth's orbit, is regarded as a mere unit, a mere infinitesimal fraction of the distance which separates our sun from the nearest star. By pursuing still further the same investigations, we learn that there are luminous clouds scarcely distinguishable by the naked eye, but resolvable by the telescope into clusters of stars, which are so much more remote that the interval between our sun and Sirius may be but a fraction of this larger distance. To regions of space of this higher order in point of magnitude, we may probably compare such an interval of time as that which divides the human epoch from the origin of the coralline limestone over which the Niagara is precipitated at the falls. Many have been the successive revolutions in organic life, and many the vicissitudes in the physical geography of the globe, and often has sea been converted into land, and land into sea, since that rock was formed. The Alps, the Pyrenees, the Himalaya, have not only begun to exist as lofty mountain chains, but the solid materials of which they are composed have been slowly elaborated beneath the sea within the stupendous interval of ages here alluded to.

'The geologist may muse and speculate on these events, until, filled with awe and admiration, he forgets the presence of the mighty cataract itself, and no longer sees the rapid motion of its waters, nor hears their sound as they fall into the deep abyss. But whenever his thoughts are recalled to the present, the tone of his mind, the sensations awakened in his soul, will be found to be in perfect harmony with the grandeur and beauty of the glorious scene which surrounds him.'

When we withdraw our eyes from the contemplation of these stupendous *Æons* of the past, man and his doings seem to occupy

a mere point in time as well as in space. Yet, speaking according to historical measure, the monuments with which this great western valley is filled, seem to claim for aboriginal America a very respectable antiquity. The great number of these monuments, the extent of many of them, the objects of art which they are found to contain, speak plainly of a more powerful and advanced race than that which was found scattered over it by the first European hunters; and, that the era to which some of them belong is separated by many centuries from that of the European discovery, is proved, curiously enough, by an examination into the comparative age of the forest which now covers them.

The Mounds indicate the existence of a very numerous, as well as a very advanced, population. It is very improbable that they can have been erected by a mere invading or conquering people, as some supposed before their number and size were known. Professor Rafinesque is said to have ascertained the existence of five hundred ancient monuments in Kentucky alone, and fourteen hundred out of it—most of which he had visited and surveyed in person. And they are spread over the whole basin of the Mississippi, from the confines of Mexico to those of the British possessions; though they reach the Atlantic border, singularly enough, nowhere but in Florida. Some of them extend over five hundred acres of land; and many have the appearance of relics of cities, or of the great settled encampments of a race long in possession of the soil. And thus conjecture may wander back, step by step, until it connects the dawn of history with the latest phenomena of extinct races exhibited by geology; and imagines the ancestors of the Indians of the Miamis contemporaries of the mammoth and the primeval elephant; but it is equally possible, that countless ages may have intervened between them. According to Mr Lyell, 'however high may be the historical antiquity 'of the mounds, they stand on alluvial terraces which are evi- 'dently of a very modern geological date. In America, as in 'Europe, the oldest monuments of human labour are things of 'yesterday, in comparison with the effects of physical causes 'which were in operation after the existing continents had ac- 'quired the leading features of hill and valley, river and lake, 'which now belong to them.' This is not altogether the view of American antiquaries. Mr Bradford says, in his Essay on this interesting subject, that various physical changes have manifestly occurred since the construction of these monuments; and especially, that 'in the state of New York the line of mural 'remains is bounded by the ancient shores of lakes Erie and 'Ontario.' If they were indeed constructed before these lakes had subsided to their present level, and if Mr Lyell's estimate of

the era of that subsidence be well founded, this would give the remains in question a most formidable antiquity; but it is probable that the speculations of the antiquarians on this subject are not founded on very conclusive observation.

Mr Lyell's second visit to Niagara took place on his return from Cincinnati, in the summer of 1842. He proceeded from thence to Toronto, Montreal, and Quebec; and thence by the well-known route of Lake Champlain, and the state of Vermont, back to Boston. He was struck with the general resemblance of the structure and appearance of Canada, to a region with which he was very familiar, the Scandinavian Peninsula. 'I seemed, he says, 'to have got back to Norway and Sweden, where, as 'in Canada, gneiss and mica schist, and occasionally granite, 'prevail over wide areas, while the fossiliferous rocks belong 'either to the most ancient, or the very newest strata—to the 'silurian rocks, or to deposits so modern as to contain exclusively 'shells of recent species. In both countries, we pass over enor-'mous spaces without beholding any formations of an interme-'diate age. In both, large erratics, or far-transported fragments of 'rock, have been carried from north to south; while the surfaces 'of solid rocks, covered at various heights by gravel, sand, and 'clay, have been smoothed and furrowed.' And the external portions of nature correspond in like manner—pine forests, masses of rock scattered irregularly over a level region, clear and rapid rivers, and a singular labyrinthine disposition of lakes and morasses, characterize equally both regions.

Mr Lyell bade farewell to his friends in Boston shortly after his return, and paid a short visit to Nova Scotia on his way back to England;—reaching Liverpool by the Columbia steamer in nine days and sixteen hours from Halifax. His glimpse of the state of affairs in the country of the 'Blue Noses,' taught him a lesson early learnt by travellers in most parts of our scattered colonial dominion,—that many of the peculiarities which, when exhibited by a Yankee, we term democratic, flourish quite as luxuriantly in certain distant parts of her Majesty's dominions under the shadow of royalty. The driver of the stage-coach from Pictou to Truro afforded a good *pendant to* the slave coachman (above-mentioned) of South Carolina. 'Drawing in the reins of his four horses, 'he informed us that there were a great many wild raspberries 'by the road-side, quite ripe, and that he intended to get off and 'eat some of them, as there was time to spare, for he should still 'arrive in Truro by the appointed hour. It is needless to say 'that all turned out, as there was no alternative but to wait in 'the inside of a hot coach, or to pick fruit in the shade. Had 'the same adventure happened to a traveller in the United

'States, it might have furnished a good text to one inclined to 'descant on the inconvenient independence of manner which de- 'mocratic institutions have a tendency to create.'

Mr Lyell is now, we hear, engaged in a second scientific journey in the United States; he will, we hope, be induced to publish some addition to his present narrative; and, if we might venture to offer him a counsel, it would be this—to devote more of his pages to subjects which, though not strictly scientific, are closely connected with that pursuit in which he has acquired deserved eminence;—to descriptions of the natural features of the country; to the exercise of that graphic power which makes the untravelled reader acquainted with the common everyday spectacle of the works of nature and man in foreign lands,—not in statistical summaries, or scientific detail, but in the broad outlines of observation. Dr Arnold complains somewhere of the extreme difficulty of meeting, in books of travels, with information on a favourite topic of his—the military topography of countries; and he gives it as an instance, if we recollect rightly, that, in consulting the books of those who have gone over the beaten tract of the neighbourhood of New York and Philadelphia, he never met with any who gave a distinct idea of the general configuration of the ground-hill, rolling plain, plateau, and so forth. There are many subjects of this kind for which the mass of men have no innate faculty of observation; while, to those who possess it, they appear so obvious and trite, that they would fear to discredit their pages by dwelling on such commonplace matters; and many a man has toiled hard, on the strength of a few weeks' run in the United States, to enlighten the world with his useless lucubrations on Democracy and Slavery, who might, from the readiness of his *coup-d'œil*, have amply and well supplied the deficiency of which Dr Arnold complained. We think it is that amusing personage, Mr Willis, who mentions, that among the Dukes and Thanes in whose company he was so fortunate as pass his leisure hours in England, few enough cared to listen to his views of the American constitution or of fashionable life—on which points he was strong; while they questioned him about the appearance and properties of live oak and post oak, *Arbor vitæ* and *Pinus palustris*, and other such vulgar denizens of American woodlands—about which he knew no more than any other Broadway Cockney. Which of us, who has not visited America, can derive from books any thing like a clear notion of the vegetation of an American forest in different latitudes? or the physiognomy of a half-cleared country, such as characterises so large a portion of the old States? or of an American district under old cultivation, as in New England? And of those who

have seen these things—as far as the rapid progress of a steam-boat or a railway car admits of the exercise of sight—how many would gladly review their own hasty impressions in the work of some abler and more leisurely observer! All geologists acquire the habit of observing closely the actual phenomena of nature, if they do not begin by exercising it; but more especially those who, like Mr Lyell, are wedded to the theory which accounts for the vast revolutions of older ages, by studying existing causes and effects. To them each vulgar feature of the every-day world—the shape of every hill and valley, the windings, currents, and eddies of the broad river or the forest brook, the roadside gravel bank, the rings on the stump of the roadside tree, the monotonous shores of the estuary, the daily tide, as it rushes past, charged with earthy deposits, or freighted with packed ice—are vestiges and indications of great truths; all, therefore, are by them studied and observed with an eagerness which makes them, when they add to their acquirements the power of description, the very best of physical geographers, and the most amusing writers of personal narratives. All this Mr Lyell has in his power; and we can assure him, that in turning over the table of contents of his next book—without prejudice to questions about repudiation, slavery, presidential election, and the voluntary system—we shall scan with much greater delight, the summaries of those chapters which promise to satisfy our far livelier curiosity regarding the physical features of that vast western region, in which Bishop Berkeley's 'fifth act' is probably to be performed, and the course of Empire to be concluded.

ART. VI.—1. *Congrès de Vienne. Recueil des Pièces Officielles.* 6 vols. 8vo. Paris: 1816.
2. *Recueil Officielle des Pièces concernant le Droit Public de la Suisse.* 2 vols. 8vo. Zurich: 1832-34.
3. *Rapport de la Commission de la Diète sur le projet d'Acte Fédérale.* 8vo. Geneva: 1832.
4. *Commentaries on the Constitution of the United States.* By J. STORY, LL.D. 3 vols. 8vo. Boston: 1833.

IN our review of Mr Wheaton's work, we sketched an outline, meagre and imperfect, but still an outline of the great science which considers those relations of independent communities which are produced or regulated by international law. The rights, however, and, consequential on those rights, the obligations, which belong to sovereign nations by the general consent of the civilized world, are not the only relations to which they are subject. Any two or more nations may vary their mutual rights and obligations by compact. Such nations stand towards one another in the *federal relation;* under which term we include every relation created by treaty, from the slight ties which connect England and Sweden, down to the intimate confederation which binds, or is intended to bind, together the Cantons of Switzerland.

The duties which may be imposed, and the claims which may be created, by this relation, obviously differ from those which owe their origin to international law. For if they were the same, treaties would be unnecessary; just as contracts would be unnecessary if all the relations between man and man were governed by municipal law. All that international law in the one case, and municipal law in the other, can do, is to direct that treaties and contracts be faithfully performed, and to give rules in certain cases for their interpretation.

To attempt to enumerate, or even accurately to classify, the objects for which treaties are contracted, would be fruitless. Roughly, it may be said that their principal objects are four. First, the termination of existing disputes; secondly, the avoiding future ones; thirdly, mutual assistance; and fourthly, the preventing one government from using its powers of external action, or of internal legislation, to the inconvenience of another.

To the first of these classes belong the treaties by which wars are ended, or by which controversies which might have inflamed into wars are settled. To the second belong arrangements of boundaries, of rights of passage and of fishery, agreements on controverted questions in international law, and, still more directly, engagements that all future disputes shall be decided,

not by force but by arbitration. Treaties for mutual assistance are directed either against third states, which appear to the contracting parties to be strong enough to be objects of alarm, or to be weak enough to be subjects for spoliation or partition; or against particular classes of the subjects of the contracting governments.

To the fourth class, belong commercial treaties, those which stipulate that the subjects of each government shall be capable of holding land or office in the other; those by which one contracting party renounces the right to engage in war or in alliances without the consent of the other; and those which prohibit certain domestic institutions, such as a free press or religious disabilities. Of course, a treaty between nations, like a contract between individuals, circumscribes the freedom of action of each party; and as the purposes to be effected in common become more numerous, each confederate renounces more and more of its independence; until at length its separate nationality may disappear, and the confederacy becomes an incorporation.

In the following pages we propose to consider four of the principal existing Confederacies,—the Zollverein, the German Confederation, the Swiss Confederation, and the American Union; to give an outline of the most important provisions of each confederacy, and of the causes which led to their adoption; to point out some of their most material merits and defects; and to ascertain to what extent the states which have formed them have retained their separate independence.

The ZOLLVEREIN belongs to the fourth class of Treaties. It is a commercial consolidation of the contracting states. But this object could not have been obtained unless each had sacrificed its power of independent action on several important subjects. The exterior frontier of the confederate states is about 1062 German miles in length—of which 774 belong to Prussia, 151 to Bavaria, 58 to Saxony, 3 to Wirtemberg, 60 to Baden, and the remaining 16 to Hesse Cassell; leaving to Hesse Darmstadt, Nassau, the Thuringian States, and Frankfort, no exterior frontier whatever. If the treaty, therefore, had contained no stipulations except for mutual freedom of trade, it would have deprived the latter states of all revenue from customs, and have altered capriciously the revenues of the others;—increasing those of Prussia, Baden, and Bavaria, and diminishing those of Wirtemberg, Saxony, and Hesse Cassell. To prevent this, it was agreed that the whole of the revenue collected along the exterior frontier should be brought to one account, and divided between the different states according to their relative population. This rendered a new set of provisions necessary: as the revenue

collected by each frontier state was no longer her own, but a portion of a common fund, it would have been absurd to allow her to regulate it. A common Tariff, therefore, was established. Another necessary consequence was the modification of excise duties, to prevent the excise revenue of one state from being destroyed by the introduction of unexcised commodities from the others. So far, however, nothing was done except with the express consent of each state. But neither a tariff nor an excise can remain long unaltered. Each must be modified from time to time, to meet the changes in production and in commerce. And if every alteration had required a new treaty, and could have been defeated therefore by the opposition of a single state, the confederacy would in time have been dissolved; either by the inconveniences arising from the want of reform, or by the disputes and difficulties which every attempt at reform must have created. A congress, therefore, to which each state sends a delegate, meets annually,—considers the changes which any member of the confederation may propose, and decides by a majority. The parties to the Zollverein, therefore, have relinquished their separate independence on two important administrative points,—commerce and finance. The Prussian tariff, which they have substantially adopted, though in many respects positively objectionable, is relatively good;—far better than that of England with all its modern improvements, and, of course, still more superior to the barbarous systems of Russia and Austria. The members of the union, who, when they joined it, were subject to a more liberal tariff than that which they now endure, have, up to the present time, found their new freedom of internal trade more than a compensation. The danger is, that if national jealousies, anti-commercial prejudices, and the desire to sacrifice the permanent interests of consumers to the temporary gains of landlords and producers, continue to spread and to increase in intensity, the tariff of the Zollverein may become more and more restrictive; and the population of the confederacy may be forced to use German manufactures, German wines, beet-root sugar, and European tobacco, to the exclusion of the far better and far cheaper products of England, France, and the Tropics.

The principal, but not the only, object of the GERMAN CONFEDERATION, is security. The ancient Germanic Empire was not a confederacy, but one great feudal state, in which the imperial authority was universally recognised, though imperfectly obeyed. That authority, however, notwithstanding its weakness, had been eminently beneficial. Though it could not prevent wars between the states which admitted its supremacy, it much

diminished them. It introduced, first by practice, and afterwards by law, the reference to arbitration of all disputes between these states. It created an Imperial Chamber as a court of appeal from the decision of the arbitrators; and it placed at the disposal of that court a large military force, contributed by the ten circles into which the empire was divided. These institutions were the great sources and the great schools of international law. They afforded defence to the weak and redress to the oppressed. They enabled more than three hundred petty states—all sovereign, except their feudal vassalage to the Emperor, but none of them capable of resisting their powerful neighbours—to preserve their independence for centuries.

But the unity of the Empire was irreparably weakened by the Reformation. Had Charles the Fifth embraced the doctrines of the Reformers, there can be no doubt that the whole of Germany would have followed his example. The public mind was so well prepared for those doctrines, that wherever they were favoured by the sovereign, they were eagerly adopted by the people; and even where the sovereign opposed them,—as in Bavaria and in the hereditary dominions of Austria,—it required centuries of oppression to eradicate them. Community of religion would have bound together the Emperor and his feudal subjects. The imperial crown might have become legally as well as practically hereditary; the great fiefs might have been gradually reunited to it, as was the case in France; and Germany might have become one great Protestant Empire. But, unhappily, we think, for Europe, Charles the Fifth and his immediate successors, with the doubtful exception of Maximilian the Second, were bigoted Romanists. Toleration was not recognised by the political morality of the sixteenth, or even of the seventeenth century. The Emperor thought lawful every means by which heresy could be suppressed. And when the imperial authority was employed in persecution, resistance ceased to be considered by Protestants as treason. For more than a century, from the league of Smalkald in 1530 down to the peace of Westphalia in 1648, a large portion of the empire was in a state of warfare against its chief,—sometimes unavowed, but more frequently open, and never intermitted. The provisions of the treaty of Westphalia, which put an end to this long contest, were very unfavourable to the central power. By the eighth article of this treaty the Emperor relinquished the right, unless by the assent of the Diet, to declare war, to make peace, to bind the empire by treaties, to raise troops or contributions, or even to garrison the existing fortresses of the empire, or to construct new ones. And by the same article, each sovereign state of the empire was declared to be independent in its

internal concerns, and even as to its foreign relations,—provided its measures were not hostile to the general body. From this time the imperial power rested on traditional reverence, and on the preponderance among the German states of the hereditary dominions of the house of Austria. But that preponderance was much diminished when the Electors of Hanover, Brandenburg, and Saxony, acquired the Crowns of England, Prussia, and Poland; and still more by the sudden growth of Prussia, and the successful wars which the royal vassal waged against his feudal lord. The traditional reverence was impaired by the errors of a series of weak Emperors, and at last destroyed by the follies and rapacity of a very clever one. The constant endeavours of Joseph the Second to trample on the rights of his own subjects, and to seize the dominions of his neighbours, and particularly his repeated attempts on Bavaria, showed that the imperial power, unless restrained by a strong public opinion, might be a formidable instrument of oppression and ambition. And unhappily, in the latter part of the eighteenth century, public opinion had been so often outraged, that at length it had ceased to be sensitive. The only remark by a British minister on the first partition of Poland was, 'that it seemed a *curious* transaction!'

At length the day of trial arrived, and the empire had to resist the revolutionary energy of France. A few months were enough to show that all its vigour, and almost all its coherence, were gone. On the 21st of October 1792, the French seized Mayence; and the next day Frankfort. On the same day the Diet met at Ratisbon, to consider the state of their relations with France, and six months elapsed before the forms were gone through which were necessary to a formal declaration of war. But by this time its ill-connected parts had begun to separate. In the beginning of 1793 the Elector of Bavaria signed with France a separate treaty of neutrality. The Duke of Wirtemberg soon afterwards made a similar proposal, which, though at first rejected by France, was at length accepted. In April 1795, the King of Prussia, as Elector of Brandenburg, made a separate peace; and engaged for the neutrality of all the states on the north of the Main. This neutrality was immediately accepted by the Landgrave of Hesse Cassell, and soon afterwards by the states forming the circles of Swabia and Franconia. And in 1797, Francis II., finding the empire practically reduced to his own hereditary dominions, signed, as Emperor, the treaty of Campo Formio.

That peace set the example of the hateful System of Indemnities,—a system under which the greater powers settled their quarrels, by agreeing to divide and appropriate the territories

of the weaker ones—a system under which a negotiation for peace inspired wider and justes alarm than a declaration of war. By the public articles of the treaty of Campo Formio, Austria ceded to France the Austrian Netherlands, and a portion of Lombardy; and France handed over to Austria, Venice, Istria, and Dalmatia. By the secret articles, Austria engaged that the left bank of the Rhine, as far as the Meuse, should belong to France; and France engaged that Austria should be indemnified by the cession to her of the Salzburg territory, and a large portion of Bavaria.

In 1799, the war between France and the Empire was renewed; and in 1801, it was again suspended by a similar arrangement, called the treaty of Luneville. By that treaty, and by the act of the Diet carrying it into execution, the whole left bank of the Rhine, and a further portion of the Austrian dependencies in Italy, became French; and the princes who lost by these cessions, received in exchange forty-five out of the sixty-one free towns, and all the territories of the ecclesiastical sovereigns.

In September 1805, the war recommenced—Wirtemberg, Baden, and Bavaria, siding with France, and Prussia remaining neuter. In the following December, it ended by the battle of Austerlitz, and the peace of Presburg. By this peace, Austria relinquished to France the remainder of her Italian dominions, and divided between Wirtemberg, Bavaria, and Baden, the Vorarlberg, the Tyrol, and her Swabian territories. She acknowledged the Dukes of Wirtemberg and Bavaria as Kings, and consented that they, and also the Duke of Baden, should possess their new dominions, and also their ancient ones, in full sovereignty. By virtue of this treaty—a treaty to which only France and Austria were parties—these sovereigns immediately abolished the representative constitutions of their states, and assumed despotic power over their own subjects, and over those of the princes of the empire whose territories were surrounded by their own. To complete the picture of the political morality of Germany, we must add, that a few months afterwards, in April 1806, Prussia, the ally of England and of Hanover, by virtue of a convention with France, seized the Hanoverian dominions and annexed them to her own.

The German empire was practically dissolved by the peace of Presburg, though it existed nominally for a few months longer. On the 1st of August 1806, Wirtemberg, Bavaria, Baden, Hesse-Cassell, and twelve other inferior members, formally detached themselves from the empire, and formed the Confederation of the Rhine, under the Protectorate of France. Five days afterwards, on the 6th of August 1806, Francis, the

fifty-fifth successor of Charlemagne, resigned the Crown which had been worn for more than a thousand years; and released from their allegiance all the electors, princes, and states, which still acknowledged his supremacy.

The act constituting the Confederation of the Rhine, declared that the sovereigns of whom it consisted possessed their territories,—including the interspersed dominions of the former princes of the empire,—in full sovereignty. So attractive was this bait, that when the Confederation was dissolved by the ruin of its protector, it included all Germany except Prussia and Austria, and the portion incorporated in France. Out of about three hundred and fifty sovereign states, not more than thirty-eight remained. All the rest had been absorbed by France, or by their immediate neighbours.

In 1814, when victory enabled the Allied sovereigns to remodel central Europe, two propositions became obvious. First, that the reconstruction of the Germanic empire on its ancient basis was inexpedient, and probably impracticable. Impracticable, because the kingdoms and grand-duchies which had arisen out of its ruins would have resisted the attempt to reduce them to feudatories—inexpedient, because that empire had shown that it had not cohesion sufficient to withstand the first shock of the compact and centralized power of France. And secondly, that to give perfect independence to its existing free Cities, Princes, and Kings of the second order, would create a set of principalities still more unfit for defence against a common enemy than they had been when members of the empire, and in most cases incapable even of keeping peace at home. No one ventured to propose to mediatize them all, and partition Germany between the only German states that could be called really powerful, Austria and Prussia; and if such a suggestion had been made, it would have been stifled by the general indignation of Europe. The only remaining course was to connect them by a confederacy; and accordingly the sixth article of the treaty of Paris of May 1814, an article which fixed the destinies of perhaps a sixth of Europe, stipulates that 'the German states shall be 'independent, and united by a federal league.'

In the following autumn the negotiations by which this vague stipulation was to be developed and effected began. Saxony, whose separate existence was then in question, was excluded from them. The right to conduct them was assumed by the other five Germanic kingdoms—Austria, Prussia, England, as representing Hanover, Bavaria, and Wirtemberg. We think it probable that neither Bavaria nor Wirtemberg would have been admitted to these conferences if Austria had

been a free agent. But she had entangled herself by the secret articles of the treaties of Reid. These treaties between Austria and Bavaria, and between Austria and Wirtemberg, bear date the 8th of October, and the 2d of November 1813. Both, therefore, must have been negotiated, and the first was actually signed, between the battles of Dresden and of Leipsic. At that time, when the fate of Europe was trembling, Bavaria and Wirtemberg almost held the balance. Estimating their armies at 50,000 men, and they rather exceeded that number, their hostility or assistance made a difference to the Allied forces of 100,000 men. Unfortunately their co-operation was obtained a few days too late. The battle of Leipsic ended on the 18th of October. On the 16th, the Bavarian army under Wrede began its march from Branau on the Inn, for the purpose of cutting off Bonaparte's retreat. Wrede reached Hanau on the 28th. Had he been two days earlier, he could have intercepted the French army at Gelnhausen, about twenty miles higher up on the Kinsig, where the only road runs between precipices on one side and a rapid river on the other. Under such circumstances the French might have been forced to surrender or disperse, and the war would have been finished in a week. As it was, he had to meet them in the open fields before Hanau, and even then Bonaparte lost more than a third of his army before he burst through.

An ally capable of such services was to be purchased on his own terms; and the terms demanded by the King of Bavaria, and conceded by the treaty, were, absolute independence and full sovereignty. The treaty with Wirtemberg contained a clause in nearly the same words. In the face of these treaties it was impossible to treat the Kings of Bavaria and Wirtemberg as mere subordinates. Their ministers took part in all the discussions in which the Act of Federation was framed; and as nothing was decided except by unanimity, they exercised a powerful and mischievous influence. All the provisions which tended to strengthen the federal authority, all those which would have protected the rights of the people of each state against its ruler, all that imposed duties on the sovereigns in favour of their own subjects or of the confederacy,—in short, all that supported liberty and order against arbitrary authority, were proposed or supported by the three great powers, England, Prussia, and Austria; and opposed by their new and comparatively inconsiderable colleagues.

Fortunately these discussions were recorded day by day as they occurred, and the record was published by Martens, who acted as secretary. It is one of the most valuable historical

documents of that memorable period.* The following short outline is chiefly taken from it:—

At the first meeting of the Conference, on the 16th October 1816, Austria and Prussia presented a project, which they had agreed on as the basis of a new federal constitution; the object of which was declared to be the preservation to all classes in the German nation of external safety, and internal constitutional rights. It divided Germany into seven circles, over two of which Austria, over two Prussia, and over the remaining three Bavaria, Hanover, and Wirtemberg were respectively to preside. The central government was to reside in a Diet, divided into two chambers—one consisting of the five presidents; Austria and Prussia having each two votes, and the three others each a single vote; and the other of the subordinate princes and the free towns. Each chamber was to decide by the majority of votes. The first chamber to sit permanently, and to have the exclusive management of the foreign relations of the confederation; the other, to regulate, with the concurrence of the first chamber, its internal affairs. The management of the federal army, and the execution of the decrees of the Diet, to be intrusted to the presidents of circles; the purely German states to be incapable of making war, or peace, or alliances; and no member of the confederation to be capable of engaging in war with any other. All their mutual disputes to be decided by arbitration, or by the higher chamber of the Diet, or by a federal tribunal. Every confederate state to receive a representative constitution, and the federal compact to declare the *minimum* of popular rights. To this proposal Bavaria and Wirtemberg objected, almost *in toto*. They especially remonstrated against the provisions which deprived the German sovereigns of the power of making war, peace, or alliances, to those which proposed a federal tribunal, and to those which mentioned constitutional rights, proposed representative governments, and stipulated for a *minimum* of popular power. The King of Bavaria said, that he exercised over his people sovereign rights, sanctioned by treaty, with which he would allow of no interference. The King of Wirtemberg, that he would acquiesce in no restriction on his powers as a sovereign, —powers actually in his possession, and recognised by treaties. He was willing to refer his differences with other German states to arbitration; but would not submit to be dictated to as to his foreign policy, or his management of his own subjects. In particular he declared, that even admitting, which he denied, the propriety of inserting, in the federal act, a clause favourable to

* *Congrès de Vienne. Recueil des Pièces Officielles.* 6 vols. Paris: 1816.

the universal introduction of representative constitutions, the time when such constitutions should be given to each state, and the amount of popular rights to be conceded, must be left absolutely to the discretion of its sovereign.* To which Prince Metternich, speaking in the name of Austria, orally answered,—'That it was absolutely necessary that the minimum of such 'rights should be fixed under the act—That under the ancient 'empire, the subjects of every German state had rights against 'their sovereign—That in some states these rights had been 'lately disregarded, and that such oppression must be rendered 'impossible for the future.' † The written answer of the plenipotentiaries of Hanover was equally decided.

'The Prince Regent of Great Britain and Hanover,' they said, 'cannot admit that the late changes in Germany have 'given to its princes despotic power. The German states from 'time immemorial have enjoyed representative constitutions. 'How can these constitutions have been destroyed by conven-'tions made by their sovereigns with Bonaparte? What sove-'reign will say, that he treated with a foreign ruler against his 'own subjects? Even if such a use could be made of the trea-'ties, those which declare certain princes to be sovereigns (the allusion is to the secret articles of the treaties of Reid) do 'not thereby declare them to be absolute. The King of Great 'Britain is as much a sovereign as any continental prince; but 'the liberties of his people support, instead of weakening, his 'throne. They demand, therefore, that it be declared by a law 'of the confederation, that representative bodies be created in the 'states in which they do not now exist, and that their concurrence 'be requisite in the imposition of taxes, and in legislation; and 'that they be empowered to watch the administration of the 'public revenue, and to demand the punishment of public de-'linquents. They are ready to acquiesce in the general rule, 'that questions between a prince and his subjects are in the 'first place to be brought before the tribunal of the state; but 'in that case, the judges should be released *pro tanto* from their 'allegiance, and engage to decide according to law. And in all 'cases there must be an appeal from the individual sovereign to 'the Diet. In the present state of men's minds,' they add, 'less 'than this will not produce content or even tranquillity.' ‡

Austria, Prussia, and Hanover appear to have attacked the obstinacy or ambition of Bavaria and Wirtemberg with every diplomatic weapon. They received the hearty support of the

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* *Recueil*, Vol. i. p. 100. † *Ibid.*, p. 85. ‡ *Ibid.*, p. 101.

German states not admitted to the conference. A Memorial signed by the plenipotentiaries of these states, dated the 16th of November 1814, urges the necessity of putting an end to all arbitrary authority, by the universal introduction of representative constitutions, by investing the representative bodies with four powers, nearly resembling those which Hanover had required—namely taxation, legislation, superintendence of the public expenditure, and representation of grievances,—by a federal tribunal, by a federal army, and by a central authority representing the German nation, and controlling all its members.* Even Russia was called to aid the cause of liberal principles. Count Nesselrode, in his master's name, declared his warm approbation of the proposed basis, and particularly of the provisions for the creation and maintenance, by the confederation, of representative constitutions, the guardians of liberty and property. 'Germany,' continued the Emperor of Russia, 'will not enjoy tranquillity until the abuses of authority are prevented, and the rights of all 'are fixed and protected by powerful and liberal institutions. 'His imperial Majesty, therefore, will support the propositions of 'Austria, Prussia, and Hanover, by the strongest expression of 'opinion, and if necessary by actual intervention.' †

The royal recusants were proof against menace, as well as against argument. They ridiculed the notion of a German nation, clung to the treaties of Reid, and protested that their duties towards their subjects and the honour of their Crown prohibited them from relinquishing a particle of their irresponsible sovereignty. The King of Wirtemberg quitted Vienna abruptly, and the conference was broken up on the 16th of November, and never renewed in the same form.

In February 1815, the minor princes and free towns requested that it might be reassembled. This request was supported by the Prussian plenipotentiaries, in a Note in which, after admitting that the original scheme was in some respects capable of modification, they declared their firm conviction that three provisions were absolutely essential; first, a strong federal army; secondly, a federal tribunal; and thirdly, the establishment and security of representative constitutions.‡

It is difficult to say what would have been the result if Napoleon had remained in Elba. Perhaps Germany would have continued a mass of independent states, with no bond of union

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* *Recueil*, Vol. ii. p. 33.
† See this remarkable paper. *Recueil*, Vol. i. p. 329.
‡ *Recueil*, Vol. iii. p. 129.

and no common superior. Perhaps it would have split into two great Confederacies, one under the Protectorate of Austria, and the other under that of Prussia. Or, more probably, the resistance of the Kings of Wirtemberg and Bavaria,—a resistance in which the people of neither country sympathized,—would have been gradually overcome; the basis of the original scheme would have been adhered to; and Germany would have obtained an external force and an internal freedom which are not supplied by the existing Act of Confederation. But at this time expedition was more important than completeness. It was probable that, within six months, the countries between the Rhine, the Elbe, and the Danube, would be the seat of war; and experience showed how fatal that war would be if it caught them discontented or even disquieted. No time was to be lost, and no time was lost. Napoleon's return was known in Vienna on the 12th of March 1815, and the Act of Confederation was signed on the 8th of June following.

The initiative was taken as before by Prussia. On the 1st of May her plenipotentiaries submitted to Prince Metternich a project, of which the material points were these: That the division of Germany into circles should be abandoned; that the higher chamber of the Diet should contain a few sovereigns as permanent members; but that all the others should be admitted in rotation. The constitution of the second chamber is not stated. It was probably intended to consist of representatives of all the members of the confederation. All executive acts were to be performed by the first chamber, taxation belonged to the second, and both were to concur in legislation. A federal tribunal was to be established to decide originally all questions between state and state, and, by appeal, all between the subjects of a state and its sovereign. In each state the judges to be irremovable except by formal judicial sentence, and released, on all questions beween their own sovereign and his subjects, from any oath of obedience. Existing representative constitutions to be maintained, and, where they did not exist, to be created, and every class of citizens to take part in them. Religion and the Press to be perfectly free, subject as to the latter to the responsibility of authors and printers, and to the inspection by the police of periodical writings and pamphlets.*

Austria proposed a counter project, under which the Diet was to consist of only one chamber, and no mention was made of the liberty of the press. The establishment of a federal tribunal was

* *Recueil*, Vol. iv. p. 201; Vol. v. p. 29.

reserved for the Diet; but the clause requiring the maintenance or introduction of representative constitutions under the protection and guarantee of the confederation, was retained. Out of these two projects was formed the plan submitted by Austria and Prussia to the new conference, and with some modifications adopted. That conference assembled on the 23d of May. It was far more numerous than the previous one, containing plenipotentiaries not only from Austria, Prussia, Hanover, and Bavaria, but also from Saxony, Hesse, Baden, the Netherlands, and Denmark, and from the minor princes and free towns. Wirtemberg alone did not appear.

The project was debated in ten conferences. The following is an abstract of the federal act which was the ultimate result. It consists of twenty articles; the eleven first are termed general provisions, the nine last special provisions. By the three first, the German states unite themselves in a perpetual Confederation, consisting of thirty-eight members.* The 4th, 5th, 6th, 7th, 8th, and 9th articles create the Diet by which the affairs of the confederation are to be managed. The Diet sits, to use an English nomenclature, either as a House or as a Committee of the whole House. In the first case, the eleven principal states—that is, from Austria down to Luxemburg inclusive—have each one vote, and the twenty-six others have six votes among them. But when it sits as a committee, the six most important states have each four votes, the five next three votes each, the three next two votes each, and the twenty-four others have a vote apiece. The eleven principal states, therefore, have eleven votes out of seventeen when the Diet sits as a house, and thirty-nine out of sixty-nine when it sits in committee. The Diet *in committee* cannot discuss, it merely accepts or rejects. The majority must consist of two-thirds, and on questions relating to the fundamental laws or organic institutions of the confederation, unanimity is requisite. The Diet *as a house*, votes according to absolute majority, Austria having a casting vote. It prepares all questions for the committee, and decides as to the

* The six most important members, are Austria, Prussia, Saxony, Bavaria, Hanover, and Wirtemberg. Next come Baden, Hesse Cassell, Hesse Darmstadt, Holstein, and Luxemburg; then Brunswick, Mecklenburg-Schwerin, and Nassau. The four free towns, Lubeck, Frankfort, Bremen, and Hamburg, and twenty inferior principalities, whose polysyllabic names are generally unknown to the English reader, form the remainder.

cases in which a reference to the Diet sitting in Committee is necessary. The questions as to which unanimity is already mentioned to be requisite, must be decided by the Diet in committee. Article ten declares, that the first duty of the Diet, on its meeting on the 1st of September 1815, shall be the enactment of the fundamental laws of the confederation, and its organization for the management of its foreign, military, and internal affairs. By article eleven, the confederates engage that they will contract no alliances which may endanger the confederation or any of its members,—will not treat separately with any power at war with the confederation,—will refer all their mutual differences to the Diet or to arbitration, and on no pretext whatever will make war on one another.

Of the special provisions, the only important ones are the thirteenth, which affirms that a representative constitution will take place (*wird statt finden*) in every state; the sixteenth, which declares that in no state shall differences as to Christian faith affect civil or political rights; and the eighteenth, which provides that the subjects of each state shall enjoy throughout the confederacy the right to purchase land, to acquire and take away personal property, to remove from their own state to any other willing to receive them, and to enter its civil and military service.

It will be observed that all allusion to a federal tribunal, or to any other mode of redressing or even hearing the complaints of subjects against their sovereigns, is omitted; and that the promise, if it can be called a promise, of representative constitutions, is expressed in terms so vague as to be valueless.

The last alteration made in this clause shows the alarm which it excited in the absolutist party. It had been pared down to these words,—'*In allen Bündesstaaten* soll *eine landstaendische* '*Verfassung bestehen*,'—which may be translated, 'a representa-'tive constitution *shall* be *established* in all the confederate states.' Bavaria objected to the imperative future *soll*, answering to our *shall*, and to the permanence of the word *bestehen*, and required *soll* to be changed into *wird*, that is, *shall* into *will*, and *bestehen* into *stattfinden*, that is, *established* into *take place*.*

These omissions were not submitted to without a struggle. On the first discussion, the princes and free towns required that the right of the representative bodies to concur in taxation and legislation, and to represent their grievances, should be secured.†

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* Schoell, *Traités de Paix*, Vol. ii. p. 307.

† *Recueil*, Vol. v. p. 100.

The same demand was made by Mecklenburg,* and by Luxemburg,† (the King of Holland,)—'What would have been the 'value,' said his plenipotentiary, 'of a promise by King John 'to the people of England, that they should have a Charter and a 'Parliament, without any stipulation as to the contents of the 'one or the powers of the other?' Austria, Prussia, Saxony, Hesse Cassell, Oldenburg, Lubeck, and all the Saxon principalities, protested formally against the omission of a federal tribunal. The plenipotentiaries of Hanover declared it to be the earnest desire of the Prince-Regent that the confederation should not be a mere political alliance, but a union of the whole German nation: That he well knew that neither the wants nor the wishes of the people would be satisfied until they obtained representative constitutions guaranteed by the union, and supported by a federal tribunal: But that, convinced that these objects could not be immediately attained, and that an imperfect confederacy was better than none, he authorized them to sign the treaty; and to accompany that signature by a declaration, that he never would relax his efforts until its defects should be supplied.‡

Thirty years have now passed since the Act of Confederation was signed, and we can form some judgment how far it has effected its proposed objects—'the external and internal security of 'Germany, and the inviolable independence of each separate 'state.' During that period, Germany has certainly been preserved from aggression. But so has been all Europe north of the Alps. We cannot ascribe to the confederation the safety of Germany during universal peace. How far, then, has the confederation succeeded in maintaining internal tranquillity? It has not prevented a royal revolution in Hanover, or popular revolutions in Saxony, Hesse Cassell, and Brunswick. It has not prevented the King of Hanover from trampling down the liberties of his subjects; or the people of Hesse Cassell and Brunswick from deposing their sovereigns; or the mobs of Leipsic and Dresden from changing the constitution of Saxony, and forcing their King to abdicate, and his immediate successor to resign. It promised Liberty of the Press: it has destroyed it throughout the whole of Germany. It promised improvement in the commercial relations of the confederate states: it has abandoned them to the Zollverein. It promised to every German free passage from state to state: and even now a

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* *Recueil*, Vol. ii. p. 270. † *Ibid.*, 161.
‡ *Ibid.*, Vol. v. p. 266.

Bohemian cannot cross the mountains which separate him from Saxony, without sueing at Vienna for a passport; and obtaining it, if he obtain it at all, at considerable expense, and after two months' delay. It promised representative constitutions to every state: a whole generation has passed away, and still, in the greater part of the confederacy, there are none. Those which exist are subject, not only in their acts, but even in their deliberations, to the *surveillance* and control of the Diet; they are forbidden to make the granting supplies conditional on the redress of grievances; they are forbidden to enact laws which may be detrimental to the confederacy; and the Diet declares itself to be the sole judge what is to be held detrimental. What will be the tendency of its decisions, may be inferred from the principle laid down by the first article of its decree of 1832—'That all political power ought to be concentrated in the sovereign of each state, and that each sovereign is not only justified, but actually bound by his duty to the confederacy, to reject any proposal inconsistent with this principle.' *

The result has been external calm, and internal fermentation. The outbreaks through which the popular indignation exhaled, during the first twenty years of the confederacy, have ceased in the hopelessness of redress. But a bitter enmity to the existing despotic institutions is general; and the popular leaders, deprived of the experience and the responsibility which both inform and control those who are allowed to take part in the real management of the affairs of their country, have been guilty of all sorts of democratic and anarchical extravagances. Never has there been a prophecy more thoroughly fulfilled, than that above mentioned of the Emperor Alexander, when he foretold that Germany would not rest satisfied with a constitution which did not oppose to the abuses of power 'strong and liberal institutions.'

It may appear questionable whether states, subject to this amount of control, are individually independent, or merely members of one Empire, of which the Diet is the aristocratic ruler. The original Act of Confederation certainly left them independent; but the fundamental laws subsequently passed by the Diet, allow, to the purely German states, little real sovereignty. We have alluded to some of those which gave a right of interference in their domestic concerns. The management of their foreign relations is almost taken out of their hands by the decree of 1820. By the thirty-first article, any foreign state may

* See Decree of the Diet of the 28th June 1832.

complain to the Diet of the conduct of a member of the Confederacy; and the Diet, if the complaint be just, is required to force the offending state to make immediate and full reparation. And generally, in case of a controversy between any member of the confederacy and a foreign state, the Diet is to examine into the question, and to require, and if necessary to force, the confederate state to accept or to render the satisfaction that the Diet may think reasonable.

Still we apprehend that the different states must be considered legally sovereign, whatever be the practical subserviency of Hohenzollern-Hechingen, with a territory of less than seven square German miles, an army of 345 men, and a revenue of £13,000 a-year; or of Liechtenstein, with less than three square miles for its territory, fifty-five men for its army, and £2200 a-year for its revenue.

In the first place, no alteration can be made in the fundamental laws of the confederation, except by unanimity. Liechtenstein may oppose its veto to the wish of its thirty-seven confederates. In the second place, the members of the Diet are merely the delegates of their respective sovereigns, speaking in their names and obeying their orders.* Both these provisions are inconsistent with the notion of the Diet's being a supreme power governing the confederacy as one nation, and acting for the general benefit of the whole, not the individual interests of a single member. And, lastly, which is the decisive mark of a mere confederacy, the inhabitants of each state owe allegiance only to their immediate sovereign. The Diet, says the decree of 1820, article thirty-two, proceeds against sovereigns, not against individuals. Resistance to its orders, or to its executive, is not treason. Under the feeble rule of the ancient Germanic Empire, the separate states possessed more real, and less legal independence than the members of the present Confederacy. Resistance to the Emperor was indeed always a crime; but in the many cases in which he was not strong enough to punish, it was not a folly. Resistance to the Diet can never be a crime, but in the weaker states it must always be a folly.

The *Pacte Fédéral*, connecting the Swiss Cantons, bears date the 7th of August 1815. Like that which unites the German states, it is an alliance partly for personal and commercial intercourse, but principally for security.

* Decree of the 3d June 1820. Art. 8.

For these purposes, however, particularly for the former, it is still less efficient than the German confederacy, as will appear from a brief summary of its principal provisions.

By the first article, the twenty-two cantons unite themselves for the preservation of internal tranquillity, and for defence against foreign aggression. They guarantee to one another their respective territory, and their respective constitutions, established by the supreme authority of each canton, and conforming to the principles of the *Pacte*. The *Pacte* proceeds to declare that no part of Switzerland shall in future be subject to another; and that political rights shall not be the exclusive privilege of any class. That no cantons shall contract between one another alliances injurious to the rights of the others. That no canton shall make war on another; and that all differences between them shall be settled by arbiters selected from among the magistrates of the neutral cantons. That every canton may require from the other cantons assistance in case of external aggression or internal disturbance;—the expense of the intervention falling on the whole Confederation, in case of foreign war, on the canton requiring aid in the case of internal disturbance. In the latter case the disturbers are to be punished according to the law of the disturbed canton, which has the option of trying them by its own judges, or by judges appointed by the cantons which have assisted in suppressing the tumult. That the purchase of commodities, and their passage from canton to canton, shall be free,—subject to any measures of police for the prevention of monopoly and forestalling. That no new tolls shall be created, or the existing ones raised, or, if they were originally granted for only a limited period, prolonged.

Such are the provisions of the *Pacte* with respect to the mutual relations of the cantons.

With respect to their foreign relations, the Cantons renounce their separate right to make war or peace, or contract alliances. They may, however, enter into conventions with foreign powers for furnishing mercenaries, and *pour des objets economiques et de police*,—such, we presume, as postage, or the extradition of criminals.*

These provisions rendered necessary a central authority, which should represent the cantons in their intercourse with foreign states, and direct their common defence. For this purpose a Diet is provided, consisting of delegates from the twenty-two

* Supplementary article of the 18th July 1818.

cantons, acting under the instructions of their respective governments; each canton having a single vote. It meets alternately for two years in Bern, Zurich, and Luzern. The canton in which it meets becomes, for these two years, the directing canton, (*Vorort*,) its principal magistrate is the President; and, during the recess of the Diet, the government of the *Vorort* is the federal government,—communicates with foreign powers, and may convoke an extraordinary session. The Diet, by a majority of two-thirds, may grant additional powers to the *Vorort*.

The power and duties of the Diet are to make war and peace, and to contract treaties of alliance and commerce. For these purposes a majority of three-fourths, or seventeen votes out of twenty-two, is requisite. It carries into execution the sentences of arbiters between canton and canton. It directs the course to be taken in case of foreign attack, or of internal sedition. And it is empowered, generally, 'to take all measures, which may be 'necessary, for the internal and external safety of Switzerland.' For all these purposes the concurrence of a majority of the whole number of votes, that is, twelve out of the twenty-two, is requisite.

The Diet has, for its instruments, an army and a revenue. The army consists of a federal militia, of about forty thousand men, which, when required, is to be furnished by the cantons, in the proportion of two per cent to their population. The Diet appoints the superior officers, calls it out, superintends its discipline, training, and equipment, and commands its services. The revenue consists of an annual sum of about forty thousand pounds sterling, furnished by the cantons; and of the produce of a duty varying from three-halfpence to threepence a hundred-weight on imports; from which, however, the commodities which we select as the especial subjects of taxation, grain, timber, hides, butter, hay, and straw, and generally the articles most important to the mass of the people, are free.*

As respects the external relations of Switzerland, the Confederation amounts to nearly a complete union. Except for comparatively unimportant details, all the cantons are represented by the Diet. But, as respects the internal tranquillity of the cantons and their relations towards one another, the *Pacte* is a mere

* The amount of this duty in 1832 was 170,000 Swiss francs, or about L.10,000 sterling. The Diet has also a capital producing an income of about L.6000 sterling a-year. So that the whole federal revenue is about L.56,000 a-year—less than the annual cost of an English frigate.

treaty, which attempts very little, and of that little has effected only a part. It guaranteed to each canton its existing constitution. During the thirty years that have passed since that guarantee was given, in the greater part of the cantons—in all, indeed, except the pure democracies—the constitutions which existed in 1815 have been subverted by violence. In some there have been successive revolutions. It professes to guarantee freedom of commerce between canton and canton, and freedom of transit. The Swiss democracies, however, have fallen into the vulgar error of thinking that they can impose duties which shall fall upon foreigners. Many of the cantons surround their petty frontiers by cantonal barriers. They construct admirable roads, and then subject those who use them to tolls and examinations, which, partly from their expensiveness in money, and still more, from their waste of time and of trouble, make it the interest of almost every trader to avoid them. In this respect Switzerland is a marked contrast to the Zollverein. In the Zollverein the duties along the foreign frontier are severe, but within that great circle commerce is free. In Switzerland the duties along the exterior frontier are scarcely more than nominal, while neighbouring cantons are striving each to exclude the other from the use of its markets and its roads.

In one respect, and a very important one, the provisions of the present *Pacte* have been eminently successful. They have cut short all the wars between the cantons. There can be no doubt that if the federal bond were broken, a set of petty independent states, differing in religion, in language, in habits, and in interests, and with the propensity to war which always accompanies the preponderance of the democratic element, would be constantly trying to tear one another to pieces. It requires a strong independent authority to keep the peace among individuals; and nations have all the bad passions of individuals in greater intensity. The Swiss, too, are eminently pugnacious. In the beginning of last year thousands of men left their comfortable homes, submitted to the fatigues and privations of long mountain marches, and exposed themselves to be shot as soldiers, or hanged as criminals, merely to prevent an independent nation from exercising its own judgment as to the choice of some of its Professors! It is probable, however, that this very pugnacity, which, if there were no confederacy, would render wars perpetual, enables the central authority to abridge or prevent them. The federal militia is always ready to start up at the first requisition of the Diet or Vorort. Its superior officers are, as we have seen, nominated by the Diet; and such is the force of military habits and traditions among a people of soldiers, that the whole

body, though drawn from so many and so different districts, is the blind instrument of its military and political chiefs.

The events of 1833 afford a remarkable example. At that time the whole of Switzerland was disturbed. The greater part of the cantons had been the scenes of successful revolutions. The Diet had resolved that the federal Pact should be amended, by provisions strengthening the central power, and enabling every Swiss to settle and follow his business or his profession in every part of Switzerland. The three forest cantons, Uri, Schwytz, and Unterwalden, urged by the love of local independence, and the hatred of innovation which belong to small democracies, and the tradesmen of Basle and Neuchatel, preferring to every public object their exclusive privileges, would consent to no change, however beneficial, which might impair the cantonal sovereignty of the former, or disturb the municipal monopolies of the latter. They recalled their deputies from the Diet, and formed an alliance, called the league of Sarnen, for the express purpose of resisting all innovation. The Valais, Appenzell, and Zug also withdrew their deputies; and, though they did not join the league of Sarnen, were avowedly favourable to its purposes. These eight cantons now became what is called in Switzerland the aristocratic party; not from the forms of their governments, all of which, except Basle and Neuchatel, are pure democracies; but from their resistance to change generally, and particularly to any change which may strengthen the central at the expense of the cantonal authority, or may give to the majority of the inhabitants of Switzerland any power over the minority. On the other hand, Bern, Argau, Thurgau, Luzern, and St Gall, though all representative, and therefore admitting into their constitutions an aristocratic element, then formed the democratic party; whose object was to destroy the sovereignty of the cantons, and to convert Switzerland into one state, governed by an omnipotent assembly elected by the majority of the people. If the aristocratic party could maintain itself, it seemed probable that the confederacy would break up into two or more hostile bodies of allies. If the democratic party should succeed, the confederacy would equally cease to exist as a confederacy, and be converted into a great republic.

But some of the cantons which had set the example of separation, were themselves in danger of falling to pieces. The country districts of Basle rose against the town, and demanded a preponderance in the legislature. Some portions of Schwytz did not possess their fair share of political power. They separated themselves from the rest of the canton, and sent their own deputies to the Diet. The government of Schwytz raised a small regular force, summoned the peasants by the alarm-bell, and took military

possession of the seceding districts. The Diet, then sitting at Zurich, called out the federal militia. The next day 6000 men were under arms: in three days the force amounted to 20,000; 3000 men instantly occupied Schwytz. Another body took possession of Basle. The seceding cantons were required to send deputies to the Diet. All obeyed except Neuchatel. Notice was given, that, unless by a certain day the Neuchatel deputies appeared, the town should be occupied by the federal troops. Within the prescribed period they took their seats. So far the Diet had interfered against the aristocratic party. Bern, which, from its wealth, territory, and population, must always lead the party to which it adheres, was then, and indeed is now, eminently democratic. The Bernese deputies, acting under the instructions of their government, now brought forward measures for the punishment of those who had promoted the late disturbances. Among them were propositions that those deputies from the Forest Cantons, who had previously represented their governments at Sarnen, should be expelled from the Diet; and that a federal tribunal should be created, to try for treason the members of the government of Schwytz, who had directed the employment of force against the districts which had separated themselves from the canton. If these propositions were rejected, the Bernese deputies were instructed to retire from the Diet. The Diet, passing by the propositions, replied to the threat, that if the Bernese deputies retired, the federal army which had occupied Basle and Schwytz would immediately occupy Bern. This was sufficient. The propositions were tacitly abandoned, and the Bernese deputies remained.

It is probable that if, in 1831, the Diet had known how completely the federal army was at its disposal, how readily it might be directed against the democratic as well as the aristocratic party, the revolutions which in that year changed the institutions of the greater part of Switzerland, would have been suppressed or prevented. Whether this would have been a good or an evil, may be a question. We are inclined to think that it would have been a good. The governments which were overturned in 1831, were, it is true, almost all aristocratic or oligarchic, but they were just and economical. Their citizens formed the richest, the most prosperous, and the best educated portions of the Swiss. We doubt whether the democratic rulers who have succeeded them, will direct the internal affairs of their cantons as well. We are sure that, as yet, they have managed the external affairs much worse. From 1831 until now, the revolutionized cantons have been the pests of their neighbours in and out of Switzerland. The local governments have not been

strong enough, or firm enough, to prevent their territories from becoming the seats of intrigues against their foreign and their Swiss allies, and occasionally the camps from which free corps —that is to say, men guilty of the atrocious crime of making war without lawful authority—have issued to invade independent and friendly states, and to subvert independent and friendly governments.

It is impossible for any impartial bystander to approve the conduct of either the democratic or the aristocratic party. The object of the democratic, or, as it is sometimes called, the unitary party, is, as we have seen, to convert Switzerland into one republic, governed by the will of the numerical majority. Its object is to destroy the cantonal nationality, which is the only nationality that affects the imagination, or obtains the love, or flatters the pride of a Swiss. Its object is to substitute for the many different constitutions by which Switzerland is at present diversified, one uniform system of representation. What would be thought of an attempt to govern France, Italy, and Holland, by one representative assembly? and yet France, Italy, and Holland, do not differ from one another in race, in interests, in prejudices, and in habits, more than the French, the German, and the Italian Cantons. They do not, indeed, differ more than the manufacturing Protestants of the Outer Rhoden of Appenzell do, from the Catholic shepherds of the Inner Rhoden. A central government perfectly just, perfectly wise, and perfectly well informed, might certainly so frame its measures as to consult the general welfare of the whole; and to impose on no district or class any burden or privation which, consistently with that welfare, could be avoided. But what chance would there be of finding an approach to such qualities among deputies chosen by a dispersed agricultural population, where climate and natural obstacles obstruct communication; where there is no class set apart, by leisure or by fortune, for the acquisition of statistical and political knowledge, and no capital to collect and reflect it?

But supposing the establishment of the best central government, —not that is possible, but that is conceivable,—it would be intolerable to the inhabitants of more than one third of Switzerland. The single canton of the Grisons now contains sixty independent states, each consisting at an average of about two hundred and fifty families,—exercising supreme legislative, judicial, and executive authority, possessing its own traditions and its own history. The pride of one of these small commonwealths would be little soothed by being told, that in exchange for its present independence, it would in future have one two-thousandth part of the government of Switzerland. Even a member of the larger

republics constituting the Valais, or even of the more populous communities of Glarus, the two Appenzells, Zug, Schwytz, Uri, and the two Unterwaldens, now accustomed to exercise sovereign authority in his own *landsgemeinde*, would treat vicarious power as mere delusion. An irresistible external force might establish such a government. France did so in 1798, after a war in which the women of the Forest Cantons fought by the side of the men. But as soon as the new government, thinking itself able to stand alone, allowed the French troops to retire, the local sovereignties, like springs relieved from a weight, started up, the legislative and executive councils fled, and nothing but foreign interposition prevented the complete restoration of cantonal independence.

The confederacy which, under the title of 'The Act of Mediation,' the strong hand of Bonaparte imposed upon Switzerland, left to the cantonal governments considerable administrative power. It allowed them to exercise legislative and executive functions within their respective frontiers; and it allowed them on all questions, except those between canton and canton, to give binding instructions to their deputies in the Diet. But in the Diet it gave a preponderance to the more populous cantons. Bern, Zurich, Vaud, St Gall, Argau, and the Grisons, had each a double vote. As there were then only nineteen cantons—Geneva, the Valais, and Neuchatel, then forming, or being intended to form parts of France—this gave to the six larger cantons twelve votes out of twenty-five. For declarations of war, for treaties of peace, and for foreign alliances, the concurrence of three-fourths of the twenty-five votes was required. On all other questions, as no proportion of votes was declared necessary, a simple majority must have been sufficient. The six cantons possessing double votes, therefore, with the concurrence of one other, could control the remaining twelve. It vested in the Diet the control of the federal army, and the management of all foreign relations; enabled it to decide all disputes between the cantons, to fix the amount of tolls, to create a uniform Swiss currency, and to authorize enlistment in foreign service. It subjected the legislative and executive officers of any canton which disobeyed a decree of the Diet, to punishment as rebels by a federal tribunal. It gave to every inhabitant of Switzerland liberty to reside and pursue his occupation wherever he thought fit,—forbad all interior custom duties, forbad any canton to connect itself by treaty with another, or with a foreign country, or to keep more than two hundred regular soldiers. Lastly, By the Act of Mediation, the cantons guaranteed to one another all their existing constitutions, and the existing terms of confederacy, against all foreign powers, against one another, and against internal factions.

At that time the constitutions of the three Forest Cantons, and of Glarus, Zug, Appenzell, and the Grisons, were, as they are now, pure democracies; the others were representative democracies, with some mixture of aristocracy.

The Act of Mediation disclaimed the intention to subject Switzerland to a central government. It professed to leave untouched the sovereignty of the cantons. It contained, however, two provisions inconsistent with that sovereignty. These were, *first*, the clauses giving double votes to six of the cantons, and allowing a majority of the Diet to bind the minority. It is essential to a federal union, as opposed to an incorporation, that each member should possess *a veto*. If it do not, its whole political existence may be changed without its concurrence. And *secondly*, the clause which subjected to punishment as rebels the legislative and executive functionaries of a canton which disobeyed the decrees of the Diet. Such a liability is destructive of sovereignty. A sovereign state cannot rebel; for rebellion implies subjection. The greatest defect of the Act was, that it seemed to exclude all modification of the existing cantonal constitutions. This was not indeed inconsistent with cantonal sovereignty, for a sovereign state may be bound by treaty not to alter its constitution; but it must in time have become an intolerable restraint. Bonaparte, however, knew that he was not legislating for posterity. He was erecting a temporary building, to be destroyed by his own hand if he succeeded in his plans of universal conquest, and to fall with him if he failed. It lasted just eleven years;—eleven years during which Switzerland enjoyed more tranquillity, more freedom, and more prosperity than any other part of the Continent. These benefits, however, did not reconcile the cantons to the loss of their independence. In 1813, as soon as an Austrian army was interposed between them and the French frontier, they declared the Act of Mediation to be void. On this they were unanimous; but scarcely two cantons agreed as to a substitute. Many wished to revert to the state of things which had been altered by the French conquest in 1798, when Switzerland was divided into cantons, confederates, allies, and subject bailiwicks, connected by complicated and dissimilar relations, the result of wars, purchases, mortgages, cessions, and treaties,—a state of things, of which the weakness and inconvenience were little felt while the rest of the Continent was also feeble and disjointed, but which would have rendered her independence precarious in the presence of the powerful neighbours by whom she is now surrounded.

The independence of Switzerland, however, is essential to the tranquillity of Europe. If she is not strong enough, we will not

say to protect herself; but to contribute powerfully towards her own protection, she must be under the influence of France or of Austria. And the power which can turn her resources against the other, will always be tempted to make use of such an advantage. On her independence depends her neutrality, and her neutrality is a great safeguard against continental war. While her frontier is respected, it covers the most vulnerable side of each of these two great military monarchies. If it had been respected in 1803, the battle of Marengo would not have been fought, and that campaign might have been as indecisive as its predecessors. If it had been respected in 1813, great additional difficulties would have been thrown in Prince Schwartzenberg's way; and the struggle, which more than once was doubtful, might have had a different termination. At the time of the Congress of Vienna, all parties, including even France, were anxious to diminish the chances of war. They required, therefore, that the cantons should be united by a confederacy sufficiently intimate to enable them to act as one body against an aggressor. For such a union the public feeling of the cantons was not then prepared. The Grisons refused to be united to the Valteline; the people of the Valteline petitioned to form part of Lombardy. Bern denied that she had any duties to perform towards a supposed Swiss nation. She denied, indeed, that there was a Swiss nation; for she asserted that the cantons were sovereign states, connected only by such treaties as they might think fit to contract.* The Congress argued, implored, promised, and at last threatened; and the result was the existing *Pacte*,—a compromise between the enlarged views of one party and the suspicious jealousies of the other, which was reluctantly tendered by the cantons, and reluctantly accepted by the Congress.†

On the other hand, the aristocratic party, by refusing to allow any of the defects of the *Pacte* to be remedied, subject all the inhabitants of Switzerland to constant inconvenience, and endanger the existence of the confederacy. The biennial change of the *Vorort* implies the removal of the seat of the federal government, with all its archives and officers, every two years. The provision that the magistrates of the *Vorort* shall form the federal executive, imposes on those magistrates duties which

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* Memoir of the Deputy of Bern, 30th Nov. 1814. *Recueil*, Vol. ii. p. 84.

† See the Remarks of the Committee of the Congress on the *Pacte*. *Recueil*, Vol. iii. p. 18.

sometimes may be, and often must appear to be, inconsistent,—their duties to their canton and their duties to the confederacy. It subjects the composition of that executive to the constitutional changes which may take place in any of the directing cantons. A revolution in Bern, Luzern, or Zurich, is a revolution in Switzerland. It places the federal power in new hands, influenced by new passions, and acting on new principles. The provision that the cantons shall submit their differences to arbitration, is enforced by no adequate sanction. It supposes that both parties are willing to assist in procuring an arbitration; where either refuses or neglects, the Diet is practically impotent. As it has no immediate jurisdiction over individuals, it can enforce its decrees only by war. And though it may put down opposition, it cannot punish those who have opposed it. The Polish refugees who, in 1834, were guilty of the wicked and insane invasion of Savoy, were dismissed with a mere nominal punishment. The free corps who, in the last spring, made the equally atrocious, though not equally absurd, attack on Luzern, if they escaped from the territory that they had violated, escaped punishment altogether. The cantonal courts did not interfere. Probably their laws resemble our own; and give to them no power to punish crimes committed by their citizens on foreign territory against foreigners. And there is no federal tribunal. By requiring from the members of the Diet, in every case, adherence to the instructions of their governments, it prevents all useful discussion. The questions which are nominally submitted to the Diet, are really considered and settled by the petty cantonal legislatures. The deputies are to act as if they could not be enlightened by information, or swayed by arguments. Whatever be their convictions, they are obliged to vote according to their instructions; though they may be certain, that if the facts had been accurately known, or properly commented on, the instructions would have been different. The guarantee of the existing constitutions of the cantons, if not literally construed, is nothing; and, if literally construed, is a prohibition of improvement. To prevent further change, indeed, seems to have been one of the principal objects of the framers of the *Pacte*. It must have been with this view that they excluded from it all provisions for its amendment. It cannot, therefore, legally be altered, except by unanimous consent; and experience has shown, that in an aggregation of such anomalous elements, unanimity is almost impossible.

But its greatest defect is, that it allows the interposition between the inhabitants of the different cantons of barriers, more numerous and more exclusive than those which, in the greater part of the Continent, separate nation from nation. We have

already mentioned the obstacles opposed by many of the cantons to freedom of inter-cantonal commerce, and even to transit. The circulation of persons is still more impeded than that of commodities. Though the law is often relaxed in practice, a Swiss cannot legally travel in many parts of Switzerland without a passport, which confines him to a certain route and a certain period. Some cantons prohibit a stranger—that is to say, a native of another canton—from establishing himself within their frontiers. Others subject him to a fine, others to additional taxation, others require him to give security for his good behaviour and solvency, others tolerate him, but subject him to the liability of arbitrary banishment. Some refuse to allow him to marry one of their citizens, others make him purchase the permission. Others sell to him the permission to marry out of his own canton. Sometimes the price varies according to the canton. Thus, by a law of 1846, a Bernese who marries a woman of Soleure, pays about £3; and the woman about £6. The smuggling a wife without payment is a grave offence—subjecting not only the offender but all his family to severe penalties. In some, his claims as creditor or mortgagee are postponed to those of their own subjects. In almost all, the difficulty of acquiring citizenship is great, except to persons of wealth, and in many even to them. This will remind the reader of the state of the agricultural districts of England, under the old law of settlement and removal; when, to use Adam Smith's words, it was more difficult for a poor man to pass the artificial boundary of a parish than an arm of the sea, or a ridge of high mountains—when a hedge might separate places in one of which there was a surplus of hands, and in the other a deficiency,—in one of which wages were unnecessarily high, and in the other lamentably low. But under the English law, a man could not be removed, except to his place of settlement. Until that was ascertained, or if it could not be ascertained, he was entitled to remain. In most of the cantons, a stranger is removable merely because he is a stranger. He is pushed off the frontier, and left to shift for himself. Hence have arisen the *Heimathloses*, consisting of those who have never possessed or have lost their right of citizenship. These are the gipsies of Switzerland. Many of them have been wanderers for generations; the majority, indeed, are supposed to be the descendants of those who fled from Germany in the Thirty Years' War. Almost every canton attacks them by vagrant laws, almost as cruel as those of England in the last century. They are hunted from territory to territory; conceal themselves in the forests or in the low quarters of the larger towns; and, as the law forces them to

be idle and miserable, revenge themselves by robbery and violence.

We have already alluded to the proposal, in 1833, for an amendment of the *Pacte*. It was adopted by the deputies of Luzern, Zurich, Bern, Glarus, Zug, Friburg, Soleure, Schaffhausen, St Gall, the Grisons, Argau, Thurgau, Vaud, and Geneva; but when proposed to the cantons for ratification, it was rejected by Luzern, which was becoming aristocratic; and as the Forest Cantons, and also Appenzell, Zug, and the Valais, were known to be opposed to it, it was abandoned. It proposed remedies for nearly all the defects of the existing confederation. It fixed the seat of the federal government at Luzern, and substituted for the *Vorort* a Landamman elected by the cantons, and four federal councillors appointed by the Diet. It required that the constitutions of the cantons should contain provisions for their legal amendment, and guaranteed them, not against change, but against change illegally brought about. It created a federal court to decide between canton and canton, and to exercise immediate jurisdiction over the inhabitants of all the cantons, for the punishment of treason or rebellion against the confederacy, and of revolutionary excesses on the part of the cantonal authorities, or of those subject to their government. It forbad the cantons to control their deputies by instructions, except as to specified subjects, and declared that on every question except the amendment of the *Pacte*, twelve concurring cantons should bind the whole twenty-two. It declared that all tolls should be regulated by the Diet, and reduced to the amount necessary to keep up the means of communication: That no canton should subject its commerce with the other cantons to any import or export duties, or impose on the products of another canton an excise duty heavier than that which it imposed on its own: That every Swiss, provided by his canton with a certificate of citizenship and good conduct, should have the right to establish himself in any other canton; to exercise there his trade or profession, to purchase and sell land, and to enjoy all civil rights, except political power and a share of the public property, and should be free from all differential taxation. And, lastly, it enabled a majority of fifteen cantons to alter the *Pacte* as they might think fit.

The authors of this project, at the head of whom was M. Rossi, then representing Geneva, maintained, as the author of the Act of Mediation had done, that their plan left the cantonal sovereignty substantially unimpaired. It appears to us, for the reasons which we have already stated, that in both cases the

creation of a federal tribunal with immediate jurisdiction, and the power given to the majority to bind the minority, were inconsistent with the separate independence of the cantons. Even the last provision of the project, the power proposed to be given to fifteen cantons to change the *Pacte* as they might think fit, passed the narrow and somewhat indistinct line which distinguishes a close confederacy from a loose incorporation. It would have enabled the fourteen representative cantons, with the concurrence of only one of the eight pure democracies, to abolish the democratic institutions of the remaining seven; and to drag all those who opposed them before the federal tribunal, to be punished for treason or rebellion.

But though we differ in this respect from the eminent men who were the framers of the project—though we think that, if it had been adopted, Switzerland would in theory have ceased to be a mere confederacy of independent states,—we agree with them in believing that the practical result would have been beneficial. It did not alarm the fears or hurt the pride of the smaller cantons, by an inequality of votes. It gave few new powers to the Diet, and those which it gave were not likely to excite much jealousy. It left to the cantons nearly the whole management of their internal affairs,—merely preventing their exercising their power to the injury of themselves and of their neighbours. As respects their relations to one another, it subjected them to no restrictions except those which are necessary to give law the predominance over force, and to repress crimes which the cantonal governments are unable to prevent or to punish. If a federal tribunal had existed, it is probable that the excesses of last spring would not have occurred. The misguided invaders of Luzern knew, that if they were beaten their own cantons afforded them retreats. Few of them would have ventured on such an enterprise, if there had been a third party bound by duty, and armed with power, to punish it.

Perhaps the most questionable provision was that which enabled a majority of fifteen cantons to alter the *Pacte* as they might think proper. Some power of alteration beyond that which necessarily belongs to all contracting parties when unanimous, is wanting; but we are inclined to think, that either the necessary majority ought to have been greater—eighteen perhaps, or even twenty votes, instead of fifteen; or that certain matters, such as the constitutions of the cantons, ought to have been excluded from the power of alteration by a majority. There is little reason, however, to believe that this part of the project would have occasioned real inconvenience; and, as

sincere friends to Switzerland, we must regret that it was abandoned.

The AMERICAN UNION is placed on the limit which separates a confederacy from an incorporation. It is either the strictest alliance of independent states, or the loosest aggregation of subordinate municipalities. The decision whether it belongs to the one class or to the other, leads to important results. If the union be an incorporation, if the people of the United States form one nation, each individual citizen owes allegiance to that nation. A combination among a portion of the citizens to withdraw from that allegiance, and either to form themselves into an independent sovereignty, or to connect themselves with any other sovereign power, would be a treasonable conspiracy—a conspiracy for which every person engaged in it would be personally responsible. On the other hand, if the Union be a mere alliance,—if the states of which it is constituted are distinct nations, each sovereign and independent, though bound to the others by treaty,—there is no national authority, beyond the authorities of each state, to which allegiance can be due. If any one shall think fit to separate from the Union, it may do so. The seceding state will be guilty of a breach of treaty; the remainder of the confederacy will be entitled to exercise against it the rights of war, and, if successful, the rights of conquest, but cannot treat any of its subjects as criminals. In fact, the subjects of the seceding state would be legally criminal if they refused to obey its orders, though in opposition to those of the federal authority. Nor is this a mere speculative enquiry, like the question as to the grounds on which every supreme government is entitled to obedience. The doubt here raised is, which is the supreme government? In case of conflict between the federal and local authorities, to which of them is obedience due? As this is a question on which the most eminent statesmen and lawyers in America irreconcilably differ,—on which even the framers of the Union were not agreed,—it would be presumptuous in us if we were to give an opinion, without at least supporting it by an outline of the facts and arguments which have convinced us.

For this purpose, we must consider not merely the Articles of Union, but the previous history of the people by whom they were adopted. We say the people, for the inhabitants of the United States have always been one people. The citizen of one state never was an alien in another. Under the British rule, all were fellow subjects, all obeyed the same sovereign, all spoke the same language, all looked back to the same ancestors, nearly all professed the same religion; and, what is perhaps the most impor-

tant link, all were governed by the same common law. The ruling power in all was a house of representatives elected by a very wide suffrage, a council, and a governor. Besides this general resemblance between colony and colony, the different classes in each colony were little distinguished by manners, wealth, or habits. In the British islands, the English, Scotch, Welsh, and Irish, have each a distinct national character, which is again modified by the accidents of rank, wealth, trade, and profession. In the colonies, nobody was poor, and nobody was very rich; nobody was grossly ignorant, and very few were highly educated. The only rank was official, and therefore temporary; and it is probable that, throughout that vast territory, there was a nearer approach to equality, a flatter level, both material and personal, than has ever existed before, or will exist again in a numerous people; and even now, when many causes of inequality have been at work for seventy years, M. de Tocqueville remarks, that there is more difference in civilization between Normandy and Brittany, which are united by a bridge, than there is between Maine and Georgia, which are separated by fifteen degrees of latitude.

When the weakness of the British Parliament, yielding to the folly and obstinacy of the British King, drove these prosperous and loyal colonies to resistance, it was not the states but the people who took the lead. The delegates who met in Congress in 1774, were appointed not by the legislature but by the people. In nearly their first act, their petition to the Crown of November 1774, they describe themselves as his Majesty's faithful subjects of the colonies of New Hampshire, &c., on behalf of themselves and of the inhabitants of those colonies; and they ask redress 'in 'the name of the faithful people of America.' They immediately assumed powers which the State legislatures were incapable of granting to them, and which could have proceeded only from a people restored by revolution to its original right of self-government. Some of their enactments, indeed, could not have been executed even by a revolutionary despotism. They forbade the importation of British commodities, and then enacted that all manufactures should be sold at a reasonable price, so that no undue advantage shall be taken of a scarcity of goods.

The Congress which met the next year, though similarly appointed, certainly adopted the Federal instead of the national principle. One of their first acts was to frame the Articles of Confederation of the 20th of May 1775. By these articles the united colonies entered into a firm league and friendship with each other, to cease on reconciliation with Great Britain, but, on failure thereof, to be perpetual. Each colony to retain its own

laws and constitutions, or to amend them as it might think fit: To send annually delegates to Congress in the proportion of one to every five thousand polls: Congress to meet in each colony by rotation: Each delegate to have a vote, and, if necessarily absent, by proxy: One half to be a quorum: Congress to determine on foreign relations, reconciliation with Great Britain, settling disputes between colony and colony, the planting new colonies, general commerce and currency, and military defence: The expense to be supplied by each colony, in proportion to its male polls between sixteen and sixty years, by taxes to be raised and levied according to its own laws: Congress to be at liberty to propose amendments, binding when approved by a majority of the colonial legislatures.

This rude sketch of a Confederacy was not ratified by the people or by the provincial legislatures, and does not appear to have been acted on. Many writers on the history of the American constitution, among whom are Kent and Story, scarcely allude to it.

The Congress of 1776 was equally Federal. It declared 'the United Colonies to be free and independent states, and as 'such to have full power to levy war, conclude peace, contract 'alliances, establish commerce, and do all other acts which in-'dependent states may of right do.' It is remarkable that not one of the sovereign powers thus enumerated had, at that time, been exercised; or has since been exercised by any one of the states which here declared themselves to be independent.

On the 4th of October 1776, the Congress signed new Articles of confederacy. They differed from those of 1775 principally in the following points. First, the several states are prohibited from entertaining any relations with foreign powers, or contracting any alliances between one another, except by consent of Congress. Congress to meet always at Philadelphia, to consist of delegates sent by the different states, and revocable at will; the delegates of each state to have only a single vote. No delegate to be appointed for more than three years out of six, or to hold any paid office, federal or provincial. For all important questions the concurrence of nine out of the thirteen states to be necessary; and for all others, except a mere adjournment from day to day, the concurrence of seven. Lastly, the Articles of confederacy are to be altered only by the unanimous vote of Congress, ratified by the legislature of each of the states.

The Congress having, in the Declaration of Independence, admitted the sovereignty of the states, its members acted in the preparation of this treaty merely as ambassadors, and not even as plenipotentiaries. As soon as it was completed it was sent to

the states for ratification; and it was not until 1781, nearly at the close of the revolutionary war, that the final ratification was obtained.

On the whole, we are inclined to think the confederation of 1775 rather less objectionable than that of 1776. A smaller quorum was required, and a bare majority of that quorum was sufficient. Under the confederation of 1776 the mere absence of the delegates from six states often paralysed the whole Union; and even when those of nine were assembled, not merely the opposition of a single state, but its refusal to vote, or the neutralization of its vote by a difference of opinion amongst its delegates, prevented the requisite concurrence. The exclusion from Congress of persons holding office, and the refusal of re-eligibility, mark the progress of democratic jealousy; and the declaration, that the terms of confederation should not be altered except by unanimous consent, made them in fact, as far as words could make them so, unalterable; since every compact whatever is alterable by the unanimous consent of all the parties to it.

The United States may be said to have been bound by this treaty for twelve years, the Articles of Confederation having been proposed by Congress in 1776, and from that time acted on, though not adopted, by a majority of the States, until the summer of 1778; and the present constitution, which superseded them, having obtained a similar ratification in the summer of 1788. Of these, six were war, terminated by the peace of 1782. While the contest was raging, the confederacy was pressed together by England on one side and France on the other. But the looseness of the bond let in destructive elements, which kept it always on the verge of dissolution. As a general rule, Congress acted not on individuals but on States. It could require supplies of men and of money from the members of the Union, but it was forced to leave to the local legislatures the task of raising them. If they chose to enlist their men only for a year, or even for a less period; if they neglected to pay, or to clothe, or to arm them; if they raised their supplies of money by issuing paper without providing for its convertibility, or limiting its amount; or if, as was frequently the case, they neglected altogether to comply with the requisitions of the central authority, that authority was powerless. The defaulting state was sovereign. It had committed a breach of treaty, for which the only remedy was war; and the attempt to apply that remedy would have produced immediate ruin to the whole Confederacy.

On looking through Washington's correspondence it will be seen, that not a single year passed in which he did not fully expect, that unless the conduct of the States was totally altered,

or France would supply the money and the troops which they neglected to furnish, the resistance to Great Britain must cease. In a letter to Congress, dated the 20th of August 1780, he thus condenses the history of the first five years of the war:—'If we had formed a permanent army, we never should have had 'to retreat, with a handful of men, across the Delaware, in 1776, 'trembling for the fate of America, which nothing but the infatuation of the enemy could have saved; we should not have 'remained all the succeeding winter at their mercy, with sometimes scarcely a sufficient number of men to mount the ordinary 'guards, liable at every moment to be dissipated if they had only 'thought proper to march against us, (1777;) we should not 'have been under the necessity of fighting at Brandywine with 'an unequal number of raw troops, and afterwards of seeing 'Philadelphia fall a prey to a victorious enemy; we should not 'have been at Valley Forge with less than half the force of the 'enemy, destitute of every thing, in a situation neither to resist 'nor to retire (1778;) we should not have seen New York left 'with a handful of men, yet an overmatch for the main army of 'these States (1779;) we should not have found ourselves this 'spring (1780) so weak as to be insulted by 5000 men, unable 'to protect our baggage and magazines—our security depending 'on a want of enterprise in the enemy; we should not have been, 'during a greater part of the war, indebted for our safety to their 'inactivity.'* This was no ebullition of temporary disappointment. Washington's contemporary letters paint, in still darker colours, the dangers to which he was exposed through the weakness of Congress, and the misconduct of the States.

In the latter part of 1776, for instance, when nothing but the Delaware was between him and the superior army of General Howe, every letter contains anticipations of immediate defeat. Thus, on the 12th of December, he writes—'There can be no 'doubt that they (the enemy) will pass the Delaware as soon as 'possible. Happy should I be if I could see the means of preventing them. At present I confess I do not.'† A week after, on the 20th, he says—'I think the design of General Howe is 'to possess himself of Philadelphia, and I do not see what is to 'prevent him, as ten days more will put an end to the existence 'of our army.‡

It was in these desperate circumstances, on the 25th of December, when his army was within four days of disbanding, that

* Sparks' *Washington*, Vol. vii. p. 162. † Vol. iv. p. 211.
‡ Vol. iv. p. 233.

Washington ventured on the almost desperate expedient of crossing the river at Trenton, with his handful of ill-disciplined troops, and attacking that army before which he had been for three months retreating. In his confidential orders to the officers who were to take part in the movement, he does not palliate its danger: 'but necessity,' he adds, 'dire necessity, will—nay, 'must—justify an attack.' * The British general was found as unfit for defensive as he had been for offensive war. The apparently hopeless enterprise succeeded; the British army retreated almost in panic to Brunswick and New York, and Washington intrenched himself in Morristown, at about thirty miles' distance. He did not feel himself, however, much relieved by his victory.

Not three weeks after, on the 19th of January 1777, he tells the Pennsylvanian authorities, that 'the army is so much re-'duced since we left Trenton, and the many that will be dis-'charged in a few weeks will so weaken our forces, that it 'will be impossible to oppose the enemy with success. As I 'cannot expect our situation to be long a secret to the enemy, 'there is no doubt that they will take advantage of our weak-'ness.' † And to Congress he writes, 'the fluctuating state of 'an army composed chiefly of militia, bids fair to reduce us to 'the situation in which we were some time ago, that is, of 'having scarcely any army at all. One of the Philadelphia 'battalions goes home to-day, the other two remain a few days 'longer by courtesy. The time for which Miflin's brigade 'came out is expired, and they stay from day to day by solicita-'tion, their number much reduced by desertions.' ‡ A week after, on the 26th, he says, 'the enemy must be ignorant of 'our numbers, or have not horses for their artillery, or they 'would not leave us undisturbed.' Soon after, on the 2d of March, § he estimates General Howe's force at 10,000 men, well disciplined and well appointed; his own at 4000, all raw, badly officered, and under no government; infers an attack to be imminent, and fears that, if it take place while the relative condition of the two armies is unaltered, 'the game is up.' ‖ On the 12th of April, he writes to his brother, 'To my great 'surprise we are still in a calm, how long it will, how long it 'can remain, is beyond my skill to determine. That it has con-'tinued much beyond my expectation, is certain. But to expect 'that General Howe will not avail himself of our weak state, is 'to say that he is unfit for the trust reposed in him—the cam-

* Sparks' *Washington*, Vol. iv. p. 241. † *Ibid.*, 282. ‡ *Ibid.*, 283.
§ *Ibid.*, 301. ‖ *Ibid.*, 314.

'paign will be opened, and without men on our side. The ridicu-'lous and inconsistent orders given by the executive powers in 'some of the states, and even by the officers therein, are scarcely 'to be thought of with patience. It would seem as if to harass 'the troops and delay their juncture, were the ends in view.' *

'The calm, however, continued till the end of June, when General Howe, having now allowed Washington to collect the appearance of an army, marched a few miles towards him, and then returned to Staten Island and New York. Washington considered this retreat 'as a peculiar mark of Providence.' † At length, on the 23d of July, he embarked his troops, according to Washington's expectations and fears, to proceed up the North River, and join General Burgoyne in his advance from Canada—but really to go to the south and invade Pennsylvania by the Chesapeak. Washington proceeded by land to meet him, marched through Philadelphia on the 24th of August, was beaten at Brandywine on the 11th of September, and again at Germanstown on the 4th of October; and in the beginning of December, intrenched himself at Valley Forge, on the Schuylkill, about twenty miles from the British headquarters at Philadelphia.

In these positions the two armies remained till the middle of the following July. So similar was the sequence of events, that Washington's letters from Valley Forge, are often almost copies of those written in the preceding year from Morristown. Thus, on the 23d of December, he tells Congress, that 'unless 'some great and capital change suddenly takes place, his army 'must inevitably be reduced to one or other of these three 'things,—starve, dissolve, or disperse; that three or four days 'of bad weather would prove their destruction; that out of 'his whole force of 11,000 men, 2898 are in camp unfit for 'duty, because they are barefoot and otherwise naked, besides a 'number confined in the hospitals for want of shoes, and others 'in the farmhouses on the same account, and that for want of 'blankets many are obliged to sit up all night by fires.' ‡. In the following February, one of his officers, General Varnum, says, 'the situation of the camp is such, that, in all human probability, 'the army must shortly dissolve.' § Washington himself, writing at the same time, anticipates a general mutiny and desertion. ‖ In the March following, he desires the Congress to estimate the temper of the army from the circumstance, that within the last six months between two and three hundred officers had resigned their commissions; and that the supplies of men, said to have been

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* Sparks' *Washington*, Vol. iv. p. 387. † *Ib.*, 482.
‡ *Ib.*, Vol. v. 197, 8-9. § *Ib.*, 240. ‖ *Ib.*, 239.

forwarded to him from Virginia and North Carolina, from desertion and other causes, had dwindled to nothing.* On the 10th of April he complains to Congress, that, from want of proper provisions, the officers are mouldering away; that scarce a day passes without the resignation of two or three commissions; that those who go on furlough do not return; and that no order, regularity, or care of the men, or of the public property, prevails.†

Two years afterwards, on the 3d of April 1780, we find neither the temper nor the condition of the army improved. 'There 'never,' he says, 'has been a stage in the war in which the dis-'satisfaction has been so general or so alarming. Some States 'furnish their troops pretty amply, others provide them with 'some necessaries, others do little or nothing at all. The officers 'and men compare circumstances. The officers resign, and we 'have now scarcely a sufficient number left to take care even of 'the fragments of corps which remain. The men have not this 'resource; they murmur and brood over their discontent.' ‡ On the 28th of May he says, 'Unless a system very different from 'that which has long prevailed be immediately adopted through-'out the States, our affairs must soon become desperate, beyond 'the possibility of recovery. Indeed, I have almost ceased to 'hope.' §

No such change, however, took place; and a few months after we find him resting solely on the hope of assistance from France. 'One of two things,' he writes to Franklin on the 11th of October 1780, 'is essential to us,—peace, or the most 'vigorous aid of our allies.' ‖ On the 20th of November he says, 'Congress will deceive themselves if they imagine that the 'army can rub through a second campaign as the last.' ¶ On the 7th of January 1781 he informs the States, that under the existing system it will be vain to expect from the troops another campaign.** On the 15th of January he states to Colonel Laurens his belief, that without an immediate and ample succour in money, though the States may make a feeble and expiring effort, the next campaign will in all probability be their last.†† On the 9th of April he tells Laurens that the predictions of his last letter are becoming verified. 'We cannot,' he says, 'trans-'port provisions to the army, because we cannot pay the team-'sters. Our troops are approaching fast to nakedness, our hos-'pitals are without medicines, our sick without nutriment, our 'works at a stand, and the artificers disbanding; in a word, we

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* Sparks' *Washington*, p. 296. † *Ib.*, 313.
‡ *Ib.*, Vol. vii. 13, 14. § *Ib.*, 58. ‖ *Ib*, 24.
¶ *Ib.*, 300. ** *Ib.*, 355. †† *Ib.*, 371.

'are at the end of our tether. Without foreign aid our present 'force, which is but the remnant of an army, cannot be kept 'together this campaign, much less will it be in readiness for 'another.'* The money thus earnestly implored was obtained, but the next year the distress had returned. On the 4th of May 1782, in a circular to the governors of the different States, he asks, 'Under the present plan of non-compliance with requisi-'tions for men and supplies, how is it possible to continue the 'war? If the States will not impose, or do not collect and apply 'taxes for the support of the war, the sooner we make terms the 'better; the longer we continue a feeble and ineffectual war, 'the greater will be our distress at the hour of submission.†

Fortunately for the greatness, though perhaps not for the morality or the happiness of America, the war had, by this time, become unpopular in England. On the 27th of February 1782, the Commons addressed the Crown against the continuance of hostilities. On the 20th of March Lord North resigned, and, though the preliminaries of peace were not signed until November, the general expectation of its conclusion prevented any active military operations on either side.

On looking back at this memorable contest, three conclusions appear to us to be irresistible. First, that such was the incapacity and misconduct of Congress and of the States, that nothing but the extraordinary military and moral qualities of Washington saved them from ruin. Secondly, that even Washington could not have saved them, if the British commanders had acted with ordinary skill and courage. And, Thirdly, that neither Washington's merits nor the British demerits would have enabled the United States to conquer their independence, if France had remained neutral. And we are inclined to believe, that such was the exhaustion of both France and America, that if England had been willing, as there can be no doubt that she was able, to continue the war for a couple of years longer, she might have concluded it triumphantly. Whether that would have been on the whole a good or an evil is a more difficult question.

Weak as the Federal tie was during the war, it became still more feeble after the peace. There was not a state in which individuals, powerful from their position, and bodies powerful from their numbers, were not anxious to break it. The expenses of the war had been supported chiefly by loans, and by the issue of a paper currency, so profuse that it had become almost valueless. The debtors formed of course the numerical majority in every state, and in almost every state the numerical majority was om-

* Sparks' *Washington*, Vol. viii. 6, 7. † *Ib.*, 286.

nipotent. Congress required the states to tax themselves to secure the loans and redeem the paper money. They not only refused to obey the requisition, but actually passed laws enabling the valueless paper money to be tendered in payment of debt; forbidding any difference between paper and specie; and in one state, requiring every man to swear that he would sell at the same price for the one as for the other; any contravention to be punished as a case of wilful and corrupt perjury. Other states passed acts inconsistent with the treaties with England and France; others entered into a commercial war of hostile regulations; and others were on the brink of a real war about boundaries and jurisdictions. Many of the leaders felt that their importance depended on the sovereignty of their state. If New York was a nation, its governor was a sort of king. If it was a mere province, he was scarcely more than a lord-mayor.

At length, however, the evils arising from the impotence of Congress, and the folly and tyranny of the local legislatures, became intolerable. In 1787, Congress recommended the states to appoint commissioners to revise the Articles of Confederation; and to propose alterations rendering the federal constitution adequate to the exigencies of government and the preservation of the Union. The people of every state except Rhode Island, appointed commissioners. They met in May 1787, and after a discussion of four months, with closed doors, produced the seven original Articles of the present constitution.

Under this constitution, the supreme federal power,—instead of being concentrated in one assembly, as it had been under the former confederacy, and as it is now in the German and Swiss confederacies,—is divided into three branches, legislative, executive, and judicial; the legislative and executive functions being, however, kept less distinct than is usually attempted in written constitutions.

The legislative power is vested nominally in a House of Representatives and a Senate, but really in those two houses and a President. Both the House of Representatives and the Senate are elected by the states; but in the Senate each state has two members, and no more, and they are elected by the state legislature: the representatives are elected by the persons who elect the popular branch of the state legislature, and the number returned for each state depends on its population. Delaware has now only one member, New York thirty-four.

The Senate, therefore, is a federal, the House of Representatives a national institution. That Senators and Representatives must be inhabitants of the states by which they are chosen, is a federal mark common to both. The Senate

exercises judicial, executive, and legislative functions. It tries impeachments, and its concurrence is necessary to treaties, and to the appointment of some high officers. The Representatives have no judicial powers, nor any that are strictly executive, except that war must be declared by an Act of Congress. The most important powers of the two houses are those which enable them to impose and collect taxes, to borrow money, to regulate commerce, to naturalize, to grant patents, to create national tribunals, to coin and regulate money, and punish forgery, to fix the standard of weights and measures, to raise, support, and regulate a military and naval force, to dispose of the territory of the United States, and to admit new states into the Union; and to make all laws which may be necessary for giving effect to the powers granted by the constitution. The Representatives sit for two years, the Senators for six.

The President is appointed by electors nominated by the states,—each state appointing a number equal to its senators and representatives in Congress. This is a national arrangement, as it proportions the influence of each state to its population. New York, having two senators and thirty-four representatives, now appoints thirty-six electors; Delaware, having two senators, but only one representative, only three. But if no person have a majority of the whole body of electors, the choice devolves on the House of Representatives—voting, however, not by number but by states, which is of course a compromise in favour of the federal principle. The President holds office for four years, but is re-eligible—is Commander-in-Chief of the army and navy, represents the Union in its foreign relations, makes treaties, which require, however, the ratification of the Senate, and has a suspensive *veto* on all the proceedings of Congress. His great influence, however, arises from his powers of appointing and removing national officers. The constitution enables him to nominate to the high diplomatic and judicial offices, but gives to the Senate a negative, and enables Congress to vest in him alone all other appointments—a power which Congress has exercised so liberally, that he now enjoys nearly the whole patronage of the Union. Still more extensive is his power of removal. It extends not merely to the offices within his absolute gift, but even to those as to which the Senate has a veto; and, as it is not restrained by public opinion, it places the whole official world at his mercy.

The Judicial power of the United States is vested in one supreme court, and in such inferior courts as Congress may establish. The judges hold their offices during good behaviour—nearly a solitary exception from the general rule. Their jurisdic-

tion extends to all questions as to the construction of the constitution; to all cases arising under the laws and the treaties of the United States; to all admiralty and maritime cases; to controversies in which the United States are a party; to those between two or more states, between citizens of different states and between a state of the Union, or its citizens and foreign states or subjects. As the constitution was originally adopted, the supreme court had jurisdiction over a state at the suit of an individual—but, in anticipation perhaps of the expediency of repudiation, this power has been repealed.

Congress may propose amendments in the constitution, which, when ratified by three-fourths of the states, become law,—the only exception being, that no state shall be deprived of its equal vote in the Senate. Lastly, The constitution, and the laws made in pursuance of it, are the supreme law of the land; any thing in the constitution or laws of any state notwithstanding. The Articles of the constitution which we have omitted, and those which have been added by amendment, are principally negative. The most important are, that no export duty shall be imposed; that no state shall have any foreign relations, make any thing but gold or silver a legal tender, or pass a law impairing the obligation of contracts; that a republican constitution is guaranteed to every state; and that all powers not delegated to the Union, or prohibited to the States, are reserved to the States or to the people.

The Articles of Union were submitted in each state to a convention of delegates chosen by the people, and ultimately, though not without great opposition, assented to by each convention.

We have already stated, that there exists in America a large party which holds the constitution, of which we have thus given an outline, to be a mere treaty between sovereign states, and binding therefore on each only so far as it is observed by the others;—which holds that each state is entitled to judge for itself, whether the acts of the federal government are authorized by the treaty, and is entitled to disobey them if it believe them to be not so authorized; or, whether authorized or not, if it believes the evil of obedience to be greater than the evil of resistance;—which holds that such resistance is not rebellion, but breach of treaty,—not treason, but war, and punishable therefore by the soldier, not by the judge.

From these opinions we utterly dissent. They appear to us to be consistent neither with the history, nor with the provisions of the Articles of Union. We have seen that the inhabitants of the Union were originally one people. That although the colo-

nies declared themselves to be sovereign states, no state ever dealt in that character with foreign nations; that at first they recognised each other's independence, and tried the experiment of a confederacy; that the experiment was so unsuccessful, that it was only through foreign assistance, and the almost incredible folly of their enemy, that they escaped subjugation during the war, and that after the peace they were on the brink of anarchy; that, pressed by the existing evils of the Confederacy, and dreading still greater mischiefs, they resolved to substitute for it a Constitution; and that it was the people, not the states, in convention, not by their legislatures, which authorized its delegates to frame that Constitution, and which adopted it when framed.

If from the history of the Constitution we turn to its text, we find it equally opposed to the supposed sovereignty of the states. The power of amendment is inconsistent with that theory. A convention appointed by the people of three-fourths of the states may, with one exception, make what alterations they think fit. They cannot deprive a state of its equal vote in the Senate, but this is the only limit to their power. The people of twenty-one out of the twenty-six states now constituting the Union,—or of thirty out of the forty of which it will soon be constituted,—may impose on the others whatever form of government they choose. They may create a hereditary President, or abolish the office altogether; they may guarantee to every state aristocratic or monarchical, instead of republican institutions; they may establish privileged orders, or vest the central government in a single assembly elected annually by universal suffrage; they may convert the United States into a monarchy, an aristocracy, or a democracy. It is no answer to this reasoning to say, that no such violent changes are likely to be effected. No state that is legally liable to be thus affected,—no state whose whole institutions are at the mercy of its neighbours,—is sovereign or independent. And this is the case with every one of the United States. Nor is it certain that important changes will *not* be made. One thing the people of the Northern and Central states, if they acquire the requisite preponderance, certainly *will* do. They will destroy what the Southern states call their domestic institutions; or, if they do not abolish slavery altogether, will treat it as it was treated by England,—make its continuance so troublesome that it will not be worth preserving.

Again, the powers of the President are those of a monarch, not of the chief of a confederacy. They far exceed, indeed, those of most European monarchs. The sovereigns of Britain and of France have theoretically the power to choose their own ministers, to

reject bills passed by both houses, and to appoint and dismiss the great majority of the public officers. Practically, each is forced to nominate the ministers whom the houses or the chambers point out to him, to assent to the bills which they have passed, and to allow all public officers, except a few of those who come into immediate contact with the Government, to retain their places for life. The American President names and retains his own Cabinet, rejects any bills which displease him, and displaces all public officers whose continuance is inconvenient to him—that is to say, all who do not belong to his party, all whose places he wants for his friends, and all who, whether friends or enemies, do not implicitly obey him. Twenty-five years hence, when the wealth and population of America will be doubled, the President, if the Union, and his powers and patronage continue, will be the most powerful individual in the world.

But the provisions of the Articles of Union, which most strongly give to them a national as opposed to a federal character, are those which create the judicial power. The Supreme Court, as the ultimate court of appeal, and the ultimate interpreter of the constitution, sits in judgment on all the acts of the States. It may set aside their legislation as unconstitutional, reverse the judgments of their courts, and declare the acts of their officers illegal. Throughout the Union, its judges make circuits, and its subordinate district courts are established. They are not bound by the laws of the state in which they sit; they are not dependent on its officers for the execution of their process. Every where they exercise over the people a national and immediate sovereignty, before which all provincial power must bend. If the citizens of the local government of a State think that a district or a circuit court, established by Congress, has exceeded its powers, their only appeal is to the Supreme Court. The decision of that court cannot be questioned.

The superiority of judges, who are appointed by the President and for life, over the state judges, most of whom are elected by the people, and many hold for short terms, or at will, occasions a general wish to resort to the national courts; and the provision which gives them jurisdiction, whenever citizens of different states are parties, enables this to be done in every important case. 'It is every day's practice,' says Justice Story, 'for a citizen of 'one State to remove to another to become a citizen of the lat-'ter, in order to enable him to prosecute suits, and assert inter-'ests in the courts of the United States.'*

* Briggs *v.* French, ii. Summer, 255.

This is, perhaps, a forced construction; but the jurisdiction expressly and intentionally given to the national courts, is decisive of the question. It enables them to enforce obedience to every lawful act of Congress, or of the executive government, and to decide what acts are lawful. Of this power they can be deprived only by the authority which, in every free country, must be practically omnipotent—the will of the people. An Act of Congress impairing it would be void; and, while it lasts, it certainly appears absurd that States, whose highest functionaries are under the control of a superior tribunal, should call themselves sovereign or independent.

The American constitution was a compromise. Its framers gave to it only a qualified approbation. They believed it to be the best which, in the existing state of passions, prejudices, and interests, could be adopted and obeyed; and they looked forward to its working with an anxiety in which fear was predominant. It has on the whole been successful, but it is an unpleasant symptom that its success has not been progressive. During the period of nearly sixty years which has passed since it was constructed, almost every country in Europe has changed its form of government; in almost every country the new constitution has been altered from time to time as its defects became manifest, and has been improved almost from year to year. In the British Islands, where the apparent changes have been the least, the real changes, and the real improvements, have been perhaps the greatest. But in the constitution of the United States few changes have been made; and most of those have been either unimportant or mischievous. To the latter class belong the extensive powers of appointing public officers, and the universal power of removing them, conferred on the President; and the exemption of a state from being sued. The keystone is the judicial power—but this is now less powerful and less independent than it appeared to be in the first years of its institution. The decision that the courts of the United States have no criminal jurisdiction at common law, has much diminished their power. Congress may give to them, and in many cases has given to them, extensive criminal jurisdiction; but what it has given it can take away. The independence of all, except the judges of the supreme court, has been impaired by the Act of Congress of 1802; which abolished many of the circuit courts of the United States, and dismissed the judges without the slightest compensation. Jefferson, under whose Presidency this was done, belonged to the party which maintains the sovereignty of the States. That party is instinctively opposed to the national judicature; and, with the unscrupulousness of the party warfare of America, used this tyrannical means of weakening it.

The Presidential part of the Constitution is perhaps that which has least answered the intention of its framers. That intention was by a system of indirect election to vest the appointment in a select class. The result has been, that the selection of electors has become a mere form. They have no more discretion than an English Dean and Chapter under a *congé d'élire*. They are chosen as mere instruments, pledged to nominate a given candidate. In a previous volume,* we noticed the mischiefs arising from the re-eligibility of the President, coupled with his short term of office. These are increased by the enormous amount of his patronage, and still more aggravated by the absolute power of removal given to him by Congress, and now uncontrolled by public opinion. Every fourth year the whole Union is convulsed by the struggle which of the two great parties shall have the exclusive enjoyment of the honours, powers, and emoluments of office. And the interval is spent in preparations for the contest, which distorts and misdirects the foreign and the domestic policy both of the Government and of the Opposition.

Another great defect in the Constitution is the exclusion from Congress of all official persons. This is an error into which the framers of democratic constitutions seem naturally to fall. Their jealousy of the executive leads them to exclude its officers from a seat among the representatives of the people. To a certain degree we ourselves suffer under it. The law which vacates a seat in the House of Commons by the acceptance of office under the Crown, and that which declares the holders of offices under the Crown, created after the 25th of October 1705, to be incapable of sitting, are examples. We evade these laws, partly by the appointment of Peers, partly by creating offices held nominally not under the Crown, but under some other functionary, or under a public board, and partly by Acts of Parliament excepting new offices from the statute of Anne. Still, however, they are the sources of perpetual inconvenience. In America, where these expedients cannot be used, the mischief is felt in its full force. The President and his ministers escape the responsibility of having to defend their measures in Congress. The members of Congress, with no administrative functions to occupy their time,—removed, in the miserable straggling village to which they are banished, from their usual labours, and duties, and pleasures,—have nothing to do but to criticise in its absence the measures of government. They form themselves into committees, each of which assumes the supervision of some branch of administration. They have

* Vol. lxxxi. p. 34.

to act on information, which in many cases must be imperfect, and under the influence not only of their own passions and interests, but of the instructions of their constituents—instructions which a Senator finds it difficult to resist, and a Representative impossible. That under such circumstances the affairs of the Union have been conducted as tolerably as they have been, is owing partly, without doubt, to the general intelligence of the people, and their long habits and traditions of self-government; but also partly, and perhaps principally, to the happiness of their position, in a vast territory far exceeding their wants, though apparently not their desires; with neighbours only on the South and the North,—the first incapable of resistance, and the second anxious only for peace and commercial intercourse. With such advantages, it is difficult, as M. de Tocqueville has well remarked, to commit irreparable mistakes.

ART. VII.—*A Supplement to Hume's Commentaries on the Law of Scotland respecting Crimes.* By BENJAMIN ROBERT BELL, Esq., Advocate. Edinburgh: 1844.

THIS is a very useful addition to the great work of the late Mr Baron Hume. That work was first published in 1797, and was carried on by the author, in two successive editions, till the year 1829. Mr Bell has now continued it, by these supplementary notes, till the year 1844. In doing so, he has had to make himself master of the whole proceedings of the supreme and of the circuit courts, and of all the statutory and other changes upon our criminal practice, during the last fifteen years; and to compare kindred cases, to reconcile or point out contradictions, and to clear obscurities. He has discharged these duties of a legal annotator very creditably—interfusing all his details with pertinent remarks—given in a style, both of writing and of thinking, marked by the plain distinctness befitting legal statement. He has the rare merit of never being too long; and, indeed, is occasionally rather too short. But, on the whole, he has performed his task with considerate industry and judgment; and has produced a Supplement indispensable to all consulters of the original work.

That work has proved, and will probably long continue, of literally incalculable practical usefulness. Prior to its appearance, almost every thing connected with our criminal proceedings was involved in great obscurity. There was no proper

book on the subject. The short and antiquated 'Laws and Customs of Scotland in Matters Criminal,' by Sir George Mackenzie; the solitary, and not well-considered, chapter on Crimes by Erskine, in his admirable 'Civil Institute;' and the insignificant 'Institute of the Criminal Law' by Forbes — which were our only Manuals, were not only imperfect, but, even to the extent they went, were quite unsuited for business. Criminal cases had not begun to be regularly reported. And, above all, the records of the court, where alone the proceedings were to be truly found, were so ill kept, so ill indexed, and in such general disorder, as to be nearly inaccessible even to the antiquarian. In this situation, though a system of law existed, it lay something like the statue in the quarry. Tradition—understanding—official experience—all called into action upon the excitement of some difficulty; these were the authorities on which too much depended. Every thing was a mystery.

Hume carried the torch into all the recesses of actual practice. He not only made himself familiar with all the scattered matter that had been published, though much of it lay hid in places not commonly explored; but he was the very first who went systematically to the records, and filtered these fountain-heads. Mackenzie and Erskine had sketched a good arrangement, upon which, however, he improved. It includes the whole subject—both the Law of Crimes, and of the Forms and Proceedings for their investigation and trial. The explanation of practice being his chief object, he never (or at least far too rarely) withdraws his eye from the actual business of the court; and therefore fixes and illustrates every point by positive authority. The result was, that, in as far as ordinary practice was concerned, he at once changed night into day. Few Institutional writers have ever done more towards the elucidation of any department of practical law. Those who only live now, in the familiar enjoyment of the light which he diffused, cannot properly appreciate the value of his exertions. For above forty years he has been the relief and the guide of all Judges and Counsel acting within his sphere; insomuch, that there is probably not one of them who, if called to act now, under an extinction of all that Hume has produced, would not feel like a person who was required to see, after the windows he had been accustomed to trust to had been suddenly closed.

And his light is not only clear, but, in general, it is remarkably correct. There is only one important subject—that of sedition and its punishment—on which there has always been a decided division of opinion among lawyers as to the soundness of his doctrines. This is a matter into which it would be useless

to enter, unless it were done thoroughly and accurately. We have no space for that at present, and no occasion; especially as the power of transporting for fourteen years, or for life, for which he contends, and this even in the case of a first conviction, if ever it existed, has been taken away by statute. But the fact undoubtedly is, that his views on this subject have always been resolutely resisted by very competent judges; and probably each succeeding generation will be more against him than that which preceded it. The only conclusion we draw from this is, that, in our present estimate of his merits as a legal instructor, this chapter must be deducted.

And, though invaluable in all other chapters as a practical book, the work, in other views, has very serious defects.

The style has most of the faults, except perhaps obscurity, that a bad style can be disfigured by. It is weak, heavy, and inelegant; with little of the clear precision proper for legal exposition; and, though expressing the thoughts of a man of literature and intelligence, conveying the impression of neither expressly; while it is at the time encumbered by a ludicrous air of sage, ponderous, formality. It is a style quite solitary among the legal writers of Scotland. Its invention must have cost great labour to one accustomed to the weighty, though sometimes inexplicit diction of Stair, and to the clear, sensible, brevity of Erskine.

There is in his Commentaries a total absence of every thing savouring of philosophy or general principle. Indeed, every thing of the kind is expressly abjured. 'The main bent and scope 'of my undertaking,' is merely 'to initiate the young lawyer in 'the elements of our criminal *practice*.'—(*Introd.*) 'I have no 'intention of bringing forward a philosophical treatise of criminal 'jurisprudence.'—(*Ibid.*) He was much more usefully employed. But, without bringing forward a general philosophical treatise, the practical elements of the law of a single country may be treated philosophically. In unfolding the legal polity of any one people, nothing is more in the way, or more useful, than to glance at foreign analogies; or to call in, as did the greatest of our Institutionists, Stair, the aid of those natural and universal principles of justice and reason, into which so large a portion of all law, but especially of all criminal law, resolves. This, it might have been thought, would have been peculiarly tempting to an author who was evoking an entire system, and had the whole field fresh before him. But these Commentaries may be read without its being discovered, except by two or three slight references to England, that any other civilized people had a scheme of delinquency and punishment; or that any enlightened

men had ever discoursed on the principles of penal law. Very likely the rules given as those of the law of Scotland, would at last have been the same as they are in the Commentaries; but they would have rested on a more solid basis, and the introduction of liberal matter would have strengthened and dignified the whole work.

A deeper imperfection is probably to be ascribed, in part, to the character of the period when the work was in the author's mind. It was composed amid the terrors and panic of the Revolution in France, when abhorrence of change was almost the only recognised public virtue. To propose an improvement was to admit a defect; and, as this indicated innovation, all such admissions were denounced. The learned Commentator was attached to the party of which this was then the creed, or the policy. The criminal law of Scotland, moreover, had suffered under parliamentary discussion, arising out of recent political trials; and the author avows that he had hastened his publication, from 'the desire of rescuing the law of his native country 'from that state of declension, in the esteem of some part of the 'public, into which, of late years, it seems to have been falling.' —(*Introd.*) A most commendable object certainly; but one that, in the circumstances, tended to aggravate an apparent determination to see nothing wrong in any part of our system. It needed have been no shame to a country still shaking from the disorders of barbarism and tyranny, that its law, never before systematized, should be imperfect. But no one imperfection is acknowledged in these Commentaries. Consequently there can be no change recommended. We cannot recollect one single suggestion in the whole work for the improvement of the law. Indeed, all such suggestions are eschewed. 'Neither have I any 'intention of *turning censor* on our practice, and of *suggesting* '*changes and reformations which might fit it to some standard of* '*higher perfection than our forefathers had in view.*'—(*Introd.*) Hence it is not merely stated what the law is; but the law, as thus stated, is upheld as wise, with an uniformity of praise to which nothing human is ever entitled.

Take an example. There is nothing now to hinder juries from delivering verdicts by the lips of their foreman; nor is it deemed improper, but exactly the reverse, in the court, if a verdict happens to be inapplicable or obscure, to point this out, and to try to get the defect removed. But when Hume first published, the law was, that all our verdicts must be in writing. They were made up in this form. 'The above assize having 'enclosed, and having chosen A B to be their chancellor (fore-'man), and C D to be their clerk, and having considered

'the criminal libel raised and pursued at the instance of her 'Majesty's advocate against E F, panel, the interlocutor of relevancy thereon, the proof adduced on behalf of the prosecutor, 'and the proof in exculpation, they all in one voice find the said 'panel guilty; in testimony whereof, these presents are signed in 'the presence, and by their authority, by the said A B and C D.' This Writ was sealed, delivered in open court, and recorded, and it formed the only attainable communication of the jury's opinion. Except in the case of a few extravagant clerical blunders, corrected by the *whole* jury *on the spot*, all errors in this nonsensical form remained, incorrigibly, parts of the verdict; and the court could not say a word, but had only to receive and to act upon the verdict as written. There were probably good reasons for all this tedious and dangerous formality in ancient, disorderly times, when tricks upon juries and verdicts were possible. But these reasons had all vanished long before the date of this work; and there was scarcely a thinking man who did not fret and sneer at the awkward form they had left. Hence written verdicts were dispensed with by a statute passed in 1814, which proceeds on a preamble amounting in substance to this, that they were nuisances.

But Hume, instead of looking forward to some such certain and speedy result, states what the law then was, without any remark on its awkwardness; and then, in that extraordinary introduction, where he selects many of the plainest defects of our law as topics for eulogy, he not only praises the written verdicts, but, with no want of boldness certainly, puts his commendation upon the very circumstances that made the legislature join the public in condemning them. 'The decision of the 'assize is transmitted to the court through the medium of the 'written verdict alone, wherein, if there be any thing obscure, 'defective, *nay, contradictory even, or unintelligible*, still *it cannot 'be explained, supplied, or amended* by the assize in court on the 'question or suggestion of the judges; neither can the judge 're-enclose them privately, to reconsider and *correct their ver-'dict for themselves*. It must be taken from them as it is, *with all its imperfections, how gross soever, on its head*, and receive 'the judgment of the court, without regard to *the prejudicial 'consequences which may sometimes attend such an issue of the 'trial.*'* This is the statement of the law, and here is the criticism *on its policy*. He selects this point as one of those on which he holds that Scotland is entitled to plume itself as supe-

* Vol. ii. p. 413; edit. 1819.

rior to England :—'Notice may also be taken of the jealousy 'which actuates our custom, of *all* intercourse between the 'judge and the jury, insomuch that the written verdict, once 'delivered into court, cannot on any pretence be retracted, *or* '*even amended or explained*, but must be received and taken '*with all its imperfections, how glaring soever*, on its head. An 'English jury, on the contrary, are conversed with, re-enclosed, 'questioned, and instructed by the court, *without any manner of* '*restraint.*'—(*Introd.*)

We have explained this example fully, not because it is by any means the most important—for it is now of no importance whatever—but because it happens to be clear. It is a good illustration of what we mean. A great many fully as strong, and of far greater consequence, might be stated. The time is fast approaching, if indeed it be not already come, when it must appear *absolutely incredible* that the author of such a work should not have one word of objection to state, even to the unchecked nomination of all juries by the presiding judge, unaided by any peremptory challenge—the clearest and the grossest vice in our former practice. Parliament has since swept away many of these blemishes; with the entire approbation of the public, and to the relief of the court and the great furtherance of justice. It is to be lamented, for his own sake, that such a Commentator did not permit himself to anticipate the inevitable verdict of a coming age; and to add to the merit of telling what the law is, the still higher merit of pointing out what it ought to be. If the suggestion of improvement was not within his plan, the frailty of blindness to imperfections might at least have been avoided. He might, if he chose, have stated the actual law, and there stopped; but he has given his sanction to defects, in any attempt to remove which, his authority in their behalf is always set up as a formidable obstacle. Yet the truth is, that while no one's opinion upon matters of mere practice is even yet entitled to so much weight, no one's opinion upon the policy or amendment of the law is entitled to less.

Thinking of these matters has recalled a view which we indicated above fifteen years ago,* of the frequent superiority of the law of Scotland to that of England in practical sense and rational equity. It is very difficult to institute any *general* comparison of the merits of the laws of two countries, because the code that may justly be deemed the best on what are thought general principles, may be the worst for the particular people.

* See this Journal, April 1830. Vol. li. p. 124.

The only satisfactory comparison is on points of importance on which each has the same object. Where the one people is generally in advance of the other, on this common ground, and especially when this is attested by the one trying to get up to the other, and by the very same ruts, the conclusion is plain. Tried by this test, we still think the balance clearly in favour of the northern part of the island; and that, if it were put to any wise neutral jurist to say which law he would give to a third nation, he would not transplant that of England.

Some very striking evidence in favour of this opinion has been furnished by the recent course of legal reform in England itself. These reforms have been very extensive—greater, probably, within these twenty years than for centuries before; and they have generally followed on the recommendations of candid and intelligent men, who had been appointed to enquire and to Report, and whose conduct, (by the way,)—they being mostly of the profession of the law,—affords, like that of their brethren in Scotland, a series of triumphant refutations of the groundless and vulgar imputation against lawyers, that, being interested in the perpetuation of legal abuses, they can never be relied on as willing legal reformers. Now the improvements thus introduced, or recommended, in England, amount, in a really surprising number of instances, to little else than to an approximation to the law of Scotland. Not that the law of Scotland has been often avowedly taken as the type; on the contrary, nothing is more curious than the composure with which all allusion to this law, even when it is copied, is avoided. Nevertheless, not being able to reject what was right, merely because it was Scotch, the English reformers have been driven to do from necessity what we have been long doing from choice.

We have no space here to do more than to state this general fact. To prove it, would require a full and minute detail of the English amendments, one by one, with the corresponding practices in the law of Scotland. This would be the subject of a most curious and useful work, or rather it ought to pervade an exposition of the differences between the laws of the two countries—a work which, considering the intercourse now existing between the kingdoms, and the appellate jurisdiction of English lawyers, with their unavoidable English leanings, over Scotch causes, it is surprising has never yet appeared. But we can confidently state this—that no one can study the English Reports and Statutes, with a view to Scotch analogies, without being satisfied that, in a large majority of cases, the evil to be rectified in England does not exist in Scotland, and that the English remedy resolves into a reduction of their law into ours. The recent

amendments of the law of England, though not the best, are the most palpable, of the trophies of the law of Scotland.

And though our southern friends be justly proud of their criminal law, this is the department in which the law of Scotland has the least reason to shrink from comparison. We have borrowed some of their principles; but we have given something in return, and think that a good deal more might be borrowed. How much was it owing to the immemorial and successful practice of Scotland, that the people of England obtained the recent and reluctant concession of prisoners being allowed, as well as prosecutors, to address juries by their counsel? An English reformer, examining the criminal system of Scotland, will find the preparatory investigation of suspected guilt so conducted, as to make it absolutely impossible that a prisoner should be obliged to go to trial, only after his supposed crime had been performed, probably before the witnesses and jurymen, on the public stage. He will find an easy expedient for avoiding the harshness of hurrying an accused man, at once, from the grand to the petty jury—that is, of actually trying him without giving him more than a few minutes' notice that he is certainly to be then tried. He will find a scheme of very simple forms and checks, under which the blunders that distinguished the cases of Frost and O'Connell could scarcely, if even possibly, have occurred. He will find in the institution of Public Prosecutor, duly assisted by subordinate officers,—but the constitutional responsibility resting upon himself,—an effectual remedy for the gross and countless evils of viewing crimes as offences against the individual injured, and of either exaggerating his sufferings by compelling him to come forward for behoof of the community, in the inconsistent characters of accuser and witness, or of leaving it to depend upon his good-nature whether there shall be any prosecution at all or not. And he will not find any thing approaching the comic scrupulousness of a legal system at once so precise and so narrow, that a malicious mischief-doer who smashes a matchless vase, can only be punished for breaking the glass that covered it.

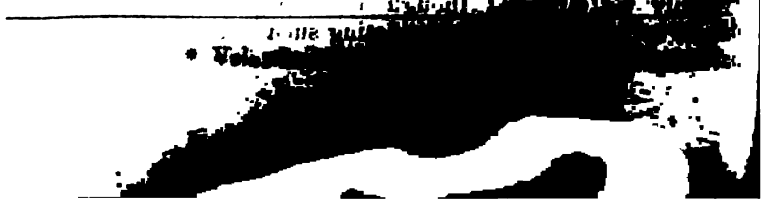
It is, perhaps, in the department of the public accuser, that, for England, the most necessary, and the least doubtful, instruction might be reaped. There is no part of the Scottish system more admirable, or in general more admirably worked. Where any thing obstructs the prevailing impartiality of his office, such as party spirit, the public prosecutor's privileges may certainly be abused; though in modern times not without danger to himself. But, deducting such rare accidents, this department of public justice is performed so well, and operates so

fairly and efficaciously, that it exhibits the conclusive practical example of the superiority of public over private accusations, for the repression of guilt, or the protection of suspected innocence. We cannot at present explain the principles or machinery by which the office works. But some of its daily results may be stated in a very few words.

The ordinary, and necessary, evils of any scheme of private prosecution, are, that offences are not complaimed of,—that, when complaints are made, they are so often groundless, or so ill supported by evidence, that many who are accused, and long imprisoned, are never tried,—and that of those tried, too large a proportion are acquitted,—a fact implying too free accusation, or too little preparation for trial. Now, without professing any thing like absolute accuracy, we are pretty confident that we may give the following as not far from the ordinary state of the facts in Scotland.

1. How many offences go unnoticed, can never be known exactly; but, most certainly, their doing so in any undue proportions is not an evil that prevails in this country. The interest which the provincial accusers have in the investigation of supposed guilt, makes the opposite objection, of rash accusation, far more plausible. 2. Of every hundred persons committed by the magistrates for trial, about (we should suppose) ninety are actually tried. 3. The ten who are not tried, instead of being left in prison, or held to bail, till some periodical jail-delivery comes round, are generally liberated, by directions of Crown counsel, in a very few days. 4. Of the ninety tried, about eighty-five are nearly certain of conviction. These calculations may possibly be a little incorrect, though in what direction we are not aware; but we are tolerably sure that, on the whole, about eighty or eighty-five out of every hundred persons committed, are convicted. We do not include summary or police convictions, which are not under the public prosecutor's direction. This is no ill-working system.

Except in cases of high treason, where the law of England prevails, Scotland has no grand juries. Twenty-one years ago, a view was given in this Journal,* the general tendency of which, though not without doubts, was in favour of the introduction of that institution into this country. We are now satisfied that this view was erroneous; and we are confident that, besides being nearly impracticable, grand juries would be not merely useless, but a very serious evil, in Scotland. We need not enter into any explanation



* [illegible]

of the grounds of our present opinion; there being no chance at present of any attempt being made to extend that institution to this quarter of the Empire. It is sufficient to mention our general idea, which formerly was, and now is this :—Laying aside theory, and fancy, and the delusion of old names, and the constitutional poetry of the matter, there is no real use of grand juries even in England, except as a protection against the grievances of private prosecution. They interpose a check between innocence and unjust accusation. But they do this merely by correcting, or defeating, the ignorance or intemperance of accusation, prompted and inflamed by the excitement of personal injury. The very small extent to which they can operate in this way, may be seen in the single fact, that the grand juries of England can never hear more than the accuser's side of the case. But where crimes are looked after by responsible public officers, the object of whose inquiry is truth, and to whom the story of the accused is just as important as that of the accuser, the uses of this check are entirely superseded. There may possibly be a grand political case, now and then, once in half a century perhaps,—when those to whose imaginations ancient forms are dear, may sigh for the grand jury. But for the million of cases, this institution is of no use where the criminal department is not a field for the carelessness, or malice, or caprices, of private prosecution.

It has never been so in Scotland. It cannot be denied that the absence of free political privileges and habits has occasionally enabled our public accuser to do injustice. But while this state of things lasted, it is obvious that the people could have derived little or no protection from grand juries; because the public apathy or helplessness that tempts a public prosecutor to try oppression, makes all kinds of juries dependent. In a debased country, grand juries only enable power to practise oppression under safer forms. In such a country, it is better to let the accusing officer stand out alone, and act on his own responsibility. So long as Scotland had no practical native representation in Parliament, this responsibility, though always far from nominal, was necessarily slighter than what was desirable. But now, that this all-pervading defect has been corrected, and kindred institutions have been improved, and the public character of the middle classes has been elevated, it is sufficient. This being the case, the people do not require the awkward intervention of grand juries to shield them; and in no other view is the absence of this institution, with its manifold incumbrances, any imperfection in our system.

Nevertheless, our criminal law has its blots—all material, and

one vital. Those who care not for these matters, and who dream that evils can be upheld or concealed by eulogising the excellences that happen to attend them, will do nothing to remove them. Others, who take an interest in the improvement of the law, and hold an evil to be only so much the worse in proportion to the good that it impairs, will deem it their duty to urge every amendment that may tend to perfect what they admire. We shall therefore specify a few of these imperfections; selecting those only which, not being connected with any matters of existing contention, have a chance of being fairly considered; and are at the same time so perfectly clear, that it is very difficult for any one, who exercises his reason alone, to defend them.

I. It is always boasted of as a legal presumption, that a prisoner not proved to be guilty, is to be held innocent. Hence, guilty or not guilty, are the only two general verdicts known under the English law. But in Scotland there are three—guilty, not guilty, and *not proven*. In both of the last two cases, the prisoner is acquitted; but with a very material distinction. *Not Guilty* means, that the jury have no doubt, either of positive innocence, or at least that there has been a clear failure in the evidence of guilt. *Not Proven* means, that while the jury are not satisfied with the evidence of guilt, neither are they satisfied of the prisoner's innocence. In this situation, while their legal consciences will not allow them to say that he is guilty, their moral consciences will as little allow them to say that he is not guilty; so they escape all difficulty by only saying that his guilt, though they suspect it, has not been proved. This is what is called '*dismissing him with a mark.*' And a pretty black mark it is. It disgraces the acquitted man; and, practically, is fatal to whatever character or hopes he may have. This is its effect, and it is generally the intention. He is restored to society—but stigmatized. Not perhaps stigmatized by the story, but by the verdict.

There are different accounts of the origin of this confusion of legal duty with private suspicion. The most probable is that which refers it to the ancient intrusion of religion into all the affairs of life. Assizers took the occasion of their acting as jurors, to act as churchmen.

But whatever its origin may be, need the practice be continued? It is against principle. It tempts jurymen not to look steadily at the evidence, and to give it its correct result; but to speculate about the possibility of soothing their consciences, or their feelings, by neither convicting nor acquitting, but steering between the two. Instead of leaving society to form its opinion of an acquitted prisoner's real guilt or innocence from the evi-

dence, it withdraws society from the evidence, and gives it the opinion of the jury to rely upon. And, above all, it is most unjust towards the accused, who comes into court prepared to meet his particular accuser; and having defeated him on the only charge preferred, finds himself ruined by an injurious doubt; which he had no other warning to guard against, than his general knowledge of the possibility that such a doubt might be expressed. And the extent of his risk may be judged of by this fact, that Juries always may, and sometimes do, persist in a verdict of *Not proven*, even when the Judge gives it as his opinion that the only proper verdict is *Not guilty*. The censor's chair has sometimes more charms than the juryman's box.

II. No judgment pronounced by the Supreme Criminal Judges, whether sitting collectively as the High Court of Justiciary, or singly, at Circuits, is liable to any process of legal review, even before that court itself. Every judgment is final and irreversible. This may be right; or it may be wrong. But this at least is certain, that wherever judgments are irreversible, courts should have ample time to consider them before they are delivered. The Scotch court has ample time for this, where the point to be disposed of occurs before the jury are sworn, or after they are discharged—that is, before or after trial. But if it occurs *during* trial, then, *as there is no power of reserving it*, it must be finally settled on the spot. It may be argued; but this must be done at the moment.

The consequences are, that the trial is obstructed; legal questions may be ill discussed, and ill decided; and even when well decided, the judgment loses the authority imparted by thought and consultation. The impossibility of having these, often reduces courts to the greatest pain and alarm. No counsel can have his loins always girt up. They are all liable to be taken short. And no judge's head is always clear, or his memory always loaded with a full and accessible cargo of authorities. Both are necessarily impatient; for the trial is stopped. The hour of liberation is deferred. Brevity is the only tolerated virtue. His Lordship attempts to quash the bar by a sudden show of apparent knowledge; and the bar strains itself to paralyse him by precedents which, on the instant, he cannot appreciate, or sophistry which he cannot at once detect. Ammunition is rushed for into the arsenal of the adjoining library; and should a learned pundit chance to appear, he is like to be torn to pieces for an opinion, by both sides. All this only thickens the cauldron. The poor distressed judge perspires, and tries to look wise and easy. But he can do nothing, and groans inwardly, when the bar at last stops. Compelled then to do something,

he first makes a struggle to evade deciding; which failing, he endeavours to escape behind some general maxim; which all failing, he relieves himself by a desperate plunge, and decides;—conscious, however, that he would perhaps have been as right if he decided exactly the opposite way. Nor are the throes of a court, consisting of several judges, less severe. The wisdom that is in the multitude of councillors, only exists when they have time to consult. Without this, multitude only multiplies doubts or confirms rashness. And during this irritating parenthesis, what are the jury doing? Yawning and forgetting; and joining the audience in its surprise at the curious niceties on which men's lives depend.

The remedy for all this is, *to empower the Court to reserve points of law*, and to receive verdicts, and to pronounce sentences, subject to this reservation. We have heard of objections to this; but none that any man would state,—none that any child could not refute.

III. By the law of Scotland every prisoner is entitled, fifteen days before the day of trial, to receive a copy of his Indictment, with a list of all the witnesses, writings, and articles of evidence that are to be used against him. This is one of the things for which our practice is generally praised; and though the amount of its benefit, in ordinary cases, is apt to be exaggerated, still it is a benefit to prisoners, and therefore it ought not to be abridged *in its fair application.*

But the rule is applied to cases where it leads to mere delay and injustice. By the existing usage, the prosecutor is not merely obliged to give the accused notice of all the evidence by which he (the prosecutor) may intend to establish *his own case;* he must *anticipate the defence*, and make his notice include the evidence by which he means to resist *the case of the prisoner;* although this last always may be, and very often is, a case of which, fifteen days before the trial, the prosecutor has no certain knowledge,—nothing beyond a conjecture, arising from his general acquaintance with the story. So long as the defence resolves into a mere denial of the charge, and a defiance of the prosecutor to prove it, this may not be unreasonable. But the accused may have *a case of his own.* The practice of Scotland does not allow this case to be discharged upon the prosecutor without notice. When there is to be what is termed a special defence, the prisoner is required, as the prosecutor of this defence, to disclose it, and its intended evidence, a day or two before the trial. In respect of notice, both parties *seem* to be on an equal footing. But this is only apparently. Because the prosecutor, who has thus a new scene opened upon him, can produce no

evidence against it, except such as was put into his notice *fifteen days before he ever saw it.*

For instance: a prisoner is to be tried on Monday. On the Saturday before, he surprises the prosecutor by announcing a defence of *alibi*, or of insanity, when the act charged was committed—or of any thing else, which, previously to his inventing and disclosing it, did not lie in the natural way of the accuser to anticipate; and he gives notice of evidence by which this defence is to be supported. All this may be grossly false; but the accuser may not have a single witness in his list who knows any thing about the matter. If he chooses to proceed, relying on the force of truth, and the feebleness of perjury, he may do so. But if he dislikes risk, he has no remedy except to put off the trial, and serve a new Indictment with an enlarged notice;—an operation which implies a delay of *at least* three weeks, because the prisoner is entitled to fifteen fresh days to his own share. And sometimes even this course is incompetent. Because a prisoner may have put himself under the provisions of that mass of imperfect protection, and of practical confusion, called 'the 'Act 1701,' after which he, or accident, may prevent the accuser from having fifteen days to operate upon. By such a move the prosecutor is checkmated at once.

The remedy for thus defeating justice by manœuvring, is, to enable the prosecutor *upon motion, and in the discretion of the Court*, to give an additional notice of evidence, *solely to meet the special defence;* but without the necessity of a new Indictment and its fifteen new days. This would be opposed by some from a love of popularity; by some from a jealousy of interfering with the principle of giving notice to prisoners of the evidence against which they are to guard; and by others, whose sympathy with truth and justice is weaker than their sympathy with the tricks or accidents that give accused men an occasional chance of laughing at the law. But let the nature of the proposed change be observed. The accused is still to have due notice. But the question is, what is *due* notice? Will nothing do except a notice that *is attached to an Indictment?* and *must it always extend to fifteen days?* If the prisoner may give his notice on Saturday, for a trial on Monday; why may not the prosecutor give his additional notice on Monday, for a trial on Wednesday? The existing evil is in the delay, the expense, and the difficulty of getting all the apparatus of a trial ready a second time. And it is for the sake of producing these very evils, that special defences are sometimes resorted to.

IV. We come now to another point, which is truly one of the weightiest matters of the law.

Suppose a person were to ask this question—What part of Europe is it where a court of law claims, and, in virtue of its own decision, actually exercises, the power of declaring any action that it thinks proper to be a crime; and of applying whatever punishment it deems expedient to the new offences thus judicially introduced? Would he not be considered a conceited fellow, who was stating a conundrum, to which he knew that, in the plain meaning of the words, there was no answer? But, unfortunately, there is an answer. The place is Scotland. And the court is the supreme criminal court of this wise old country. Let us first establish this *fact*.

All properly constituted criminal courts must be entitled to see through, and to resist, all devices for hiding recognised crimes under new names or forms. An old crime may be committed in a new way. New forms may be within old principles. But, *over and above this*, the Court of Justiciary in Scotland exercises the function of introducing, for the first time, *totally new* offences; that is, of declaring acts never existing, or never objected to before, as criminal, to be new crimes. And the court claims this power, not in virtue of any statute, but solely under what has been termed '*its own inherent authority*.'

In evidence of this startling fact, it is sufficient to quote the following passages from the *Commentaries*:—'Another point,' says Mr Hume, 'in which the custom of the two countries remarkably 'differs, is, with respect to the punishment of new crimes, or 'modes of transgression. It seems to be held in England, that no 'court has power to take cognisance of any new offence, although 'highly pernicious, and approaching very nearly to others which 'have been prohibited, until some statute has declared it to be a 'crime, and assigned a punishment. With us the maxim *is directly 'the reverse*; our Supreme Court have *an inherent power, as such, 'competently to punish every act which is obviously of a criminal 'nature; though it be such which in time past has never been the 'subject of prosecution*.'—(*Introd.*) This he gives as the general principle—and then, in the body of his work, he illustrates it by examples. Speaking of the competency of transporting for sedition, he says—'Even where a crime is *entirely new*, and '*has never been the subject of trial*, still our Judges have the undoubted power, and are in the use, of applying such a remedy 'to it, not excepting transportation, as the nature and degree of 'the evil *seems to require*.'—(Vol. I. p. 358. edit. 1819.) Again, speaking of the English statutes against threatening letters, he observes—'The truth is, that we have little reason to regret 'the want of these statutes; because our common-law has *native vigour to punish these enormities*, in a manner which the com-

'mon law of England would not have authorized; and which is 'fully equal to what the urgency of the evil, in this country, 'has at any time required.'—(Vol. I. p. 436.) Lastly, after mentioning that mere combination by workmen, to raise wages, was declared a crime by the court for the first time in 1813, he says —'This *new* point of dittay seems therefore now to be thoroughly 'established, and it furnishes another illustration of the character of our common law, and *of its power to chastise, of its own native vigour*, ALL WRONGS AND DISORDERS, AS THE STATE OF 'SOCIETY BRINGS THEM FORTH, which are found to be materially 'dangerous to the public welfare.'—(Vol. I. p. 491.)

These passages leave no doubt as to the learned author's exact meaning. Every wrong or disorder, materially dangerous, may be punished, as society brings them forth, without judicial precedent, or statutory authority, merely by the 'native vigour' of our common law. But Mr Bell explains, with perfect accuracy, that this doctrine is plainly not meant to be applied solely to the case of 'offences which, although not yet distinguished 'by any short and unbending *nomina juris*, do yet fall under *some* '*defined category of crime*, (and) are comprehended *under some* '*clearly marked principle or rule*, which has in former times 'been enforced.'—(Sup. p. 174.) If this had been all, it would only have amounted to the humble doctrine, that a culprit cannot escape by committing an old crime in an original way. But Mr Bell says, justly, that the principle laid down by Hume applies, 'not merely to such cases as these where a new form of 'transgression against an old, established, and clearly marked 'rule of law has been invented, but where *an entirely new, and* '*by the law unheard of description of wickedness has sprung up, and* '*been displayed in acts which it is impossible to regard as partaking of the same individual species of criminality with any offence* '*that has been punished before*.'—(P. 174.) He gives combination and keeping a gaming-house as examples.

There is a superabundance of authority to show that this is the real extent of the principle. But nothing is necessary beyond the recent case of Greenhuff.* The question there was just this—whether the court could, in virtue of its common-law power, *introduce* the act of keeping a public gaming-house, for playing games of chance for money, into the catalogue of crimes,—it having never been prosecuted before. The decision was, that it could. This, in itself, is of no importance. But the fact is of the very greatest importance,—that the result was only reached *through the*

* 19th Dec. 1838. *Swinton's Report.*

native vigour. The whole Judges, except Lord Cockburn, who dissented, expressly recognise and act upon this principle; and *indeed the very words of Hume, as above quoted, are stated in the printed Report to have been read from the bench as correctly describing the law.* The judges composing the majority, did not merely by their reasonings imply an affirmance of this principle as law;—they each expressed acquiescence in it as law, directly and individually. It was a deliberate and solemn recognition of the full doctrine, as stated by Baron Hume: whatever hopes, or whatever fears, may have been entertained that a different view would have been taken in modern times, this decision dissipated them all. So that we have it, on authority to which we are bound to bow, that even in modern times this is the law.

Hume, apparently as if recoiling from his own doctrine, generally mixes it up with qualifications, which, at first sight, seem to render it less monstrous, but in reality do not; and he is followed in this delusion by all the judges who agree with him. Thus he at one time says that the new act must be '*obviously* '*of a criminal nature.*' It must be a '*wrong* or *disorder,*' and '*materially dangerous.*' It must, as was said in the case of Greenhuff, be 'grossly *immoral and mischievous* on the face of it,'—'*a public nuisance,*'—'*pernicious to society,*'—'*a malum in se,*' &c. And one most ingenious judge, long ago dead, used to state it in this way:—That there must at least be a breach of the law of nature; that the law of nature is a part of the common law of Scotland; and who can say what the law of nature is except the court?

Now it is almost too plain to justify its being pointed out, that these limitations do not, in the very least, abridge the general principle. They still leave the matter *in the absolute discretion of the Court.* There must be a wrong—an act of a criminal nature—something materially dangerous—immoral and mischievous—a violation of the law of nature—*in the opinion of the judges.* Their reason and feelings may be perfectly sound, incapable of erring, and deserving of full public trust; but, speaking logically, nothing surely can be clearer, than that stating the rule, with these explanations, is merely repeating it.

And it must never be overlooked, that as the rule is given, *the power of applying adequate punishments* is involved in that of declaring new crimes. Hume lays it down expressly, that the court, on rearing up a new offence, can always '*chastise it with a* '*suitable and seasonable censure;*' but only 'with the exception 'of life and limb.' All other censures, including the law's worst, are at its command. Why life and limb are saved, does not appear; nor is any reason or authority given for the exception.

Accordingly the learned person who was at the head of the court in 1808, in delivering his opinion in the case of Wright, for child-stealing, expressed his dissent from this limitation. 'His Lord-'ship stated that he differed from Mr Hume, in so far as he 'seems to think that there is not in this court, either originally 'or by usage, the power to punish new crimes *capitally*, accord-'ing to the nature of the offence. He has given no authority for 'this *dictum*. And it seems to follow, that if the court have an 'inherent power to repress crimes, it must have the power to 'redress them, by imposing an *adequate* punishment.' And the late Mr Burnet, who gives a report of what passed on the bench on that occasion, states the court to have been *unanimous* in holding, '*that they had powers, from the inherent nature of* '*their jurisdiction, to pronounce a capital sentence on a crime* '*meriting that severity.*' *

All this establishes the fact, that a power of judicially introducing new crimes, and of applying adequate punishments, does exist; or, which is the same thing, in as far as the people are concerned, has been decided to exist; and that this authority adheres to the court by the mere force of the common law. The expediency of this we are not yet discussing. But the fact seems indisputable.

Nothing could be more unjust than to blame the court for such decisions. It is said that all courts like to extend their jurisdiction. And as this only means that all men like power, it is true. But it is not truer of one court than of another; nor of this, than of any other, claim of jurisdiction. Since the law, as laid down by Hume, forced itself upon the conviction of the judges, what could they do but declare it? The law may be wrong, while they are quite right. They are not struggling for the *continuance* of unusual power—*which would be a very different thing*—but have simply done their duty in announcing the fact, that the law, as they feel bound to interpret it, lays the exercise of this painful and invidious authority upon them.

The *policy* of such a law, is another question. And it is a question in which every one of the lieges—man, woman, and child—has the deepest personal interest.

All the defences of it that we have ever seen, resolve into what has been suggested by Mr Hume; and what he says is this:—'And certainly this course is at least attended with two advan-'tages. To the public it is thus far beneficial, as the evil' (he means the new crime) 'is repressed in its beginnings, and more 'effectually than it *ever can be by statute;* because *all statutes*

* Burnet's *Criminal Law*, p. 134.

'*are liable to be partial and defective in their description of new* '*offences;* and thus the transgressor finds the means of eluding 'the sanction, and the law itself falls into contempt. But it is 'also a merciful course to the offender; because the crime being 'censured on its first appearance, and *before* it has become fla-'grant or alarming to the community, is restrained at thats eason 'by far milder correctives than are afterwards necessary to be 'applied to it, when the growing evil has come to require the 'passing of an express law in that behalf.'—(*Introd.*) This, really, is the whole defence. The expression of it has been varied; but this is its substance; and it has never been expressed better.

Nevertheless, it would be a palpable impeachment of the common sense of our readers to suppose that any serious discussion was necessary for its refutation. It implies, and all rests on the implication, that on the question, whether any action is to be held indictable or not, the *community is safer under the absolute wisdom of two or three individuals,* no matter how great their intelligence and virtue, *than under the wisdom of Parliament!* If it be so, why not, honestly and directly, abolish the functions of Parliament in this matter? And as to all the supreme criminal courts? If this be so effective, and yet so humane, a system, why should Scotland alone have the benefit of it? We understand that it is withheld from the people of England and Ireland. But if it be proper to be retained in Scotland, it is to be hoped that some member, superior to prejudice, will rise and propose to vest it in the Queen's Bench. As to statutes being defective in their descriptions of crimes, no doubt they often are so; because human thought and human language are defective. But does this cease *whenever it is a court that thinks or writes?* Are there no obscure judgments? Do judges never differ as to what their own judgments mean? It is merciful, it seems, to *censure* —(that is, to transport or hang)—before guilt becomes alarming —on its very first appearance. Does the man think so who, instead of being warned by usage or a statute, finds himself suddenly in the toils of an Indictment, on account of something that was never thought criminal before? Parliaments are more severe than courts. They are so sometimes. But are they so always? Before setting down the whole excess of severity to the debit of the statute-book, the learned author ought to have recollected two facts stated in his own work. One is, that while Parliament only allowed sedition to be punished in England by fine and imprisonment, it was punished, under the discretion of a court, by transportation in Scotland. Another is, that while combination was punished by eighteen months' imprisonment, without a statute, in the northern part of the island, it could

only be punished, under a statute, by three months' imprisonment in the southern part. It has been said that the Scotch punishments in these two cases were the best. Let it be held so. The question is, which were the mildest? The law of Scotland has much to take credit for on the other side. Very probably the balance is in her favour. But it is plainly not so easily struck as is supposed.

The utter frivolity of these defences makes it almost unnecessary to say any thing on the other side. To all men who reverence the constitution, the single circumstance, that this power of judicial legislation is *unconstitutional*, must of itself be conclusive. Nothing else need be said. Were more required, the following considerations must present themselves to almost every mind: 1. That when it depends on the views of a court whether the quality of indictable guilt is to attach to an action, the legal character of the action must vary according to the variations of men, or of opinion, on the bench. So it must, when it depends on the varying sentiments of Parliament. But change is what is expected from the one, uniformity from the other. 2. That the exercise of undefinable power, especially where it implies dispensing with the legislature, is not favourable to the formation of the best judicial habits. 3. That courts may err; and, not feeling or not viewing things in unison with the public, may declare that to be a crime which others do not think so, or a worse crime than others do;—the most awkward position in which a court can stand. This may happen with Parliament also. But not so likely; for Parliament is a better, and infinitely more extended representation of public sentiment. And, moreover, 4th, Wherever the imputation of guilt, or the infliction of punishment, is not sympathized with, it is expedient to save judges from the consequent disapprobation. If a new law is to be abused, let not the abuse fall on a court of justice. The people bow to judicial wisdom in the *interpretation* of law, not in its *creation*, which is known not to be judges' work.

The truth is, that the power of creating crimes is the last power that the legislature should part with, or a court take. It would be a slighter departure from the constitution, that courts should be allowed to introduce whatever laws they might think expedient for the protection of civil interests. Nay, the delegation by Parliament to a court of its right to regulate our political and commercial systems, would be far less extravagant than delegating to a court, or to any small number of official men, how eminent soever, to make any act of any man's life criminal, that these persons may think morally wrong and injurious.

It will naturally be asked, how this very anomalous sort of

authority has actually operated in Scotland? What has been its history? Not that the most favourable answer that might be fancied could be decisive, or even very material in its favour; because the thing never to be lost sight of is, how such a power *may* operate. Still it is a natural question, and an important one. And the only satisfactory answer will be, to state the course which it has hitherto taken.

All courts have found themselves compelled anciently, and before the functions of Parliament were properly adjusted and understood, to help out justice by a good deal of what Bentham terms 'judge-made law,'—often the best law that is. There is little reason to doubt, that in this stage of the Scottish progress, not merely the supreme court, but all official bodies of a legal sort of character, were in the habit of talking of their power to keep all things right, by punishing whatever they thought wrong. But there are many reasons for doubting whether it was anciently understood, that any such principle had got itself embedded in the law. One of these reasons is, that the whole Scotch statute-book teems with new-made crimes. We have been told there are *greatly above three hundred* of them. And the actions thus condemned by Parliament are precisely the same with those which are described, and indeed expressly specified, by Baron Hume, as within the creative jurisdiction of the court—practices deemed commercially or politically dangerous, breaches of good order, and injuries inflicted by gross violations of moral duty. There was no need of one-tenth, if of any, of these Parliamentary interferences, if there had been understood to be a judicial board always sitting, by which '*all wrongs and disorders, as the 'state of society brings them forth,*' could be repressed.

Some of the injudicious defenders of this power have been heard to ascribe its origin to the Privy Council of Scotland, to whose criminal jurisdiction these persons pretend that the Court of Justiciary has succeeded. There is no foundation whatever for this; and were it true, what could be more conclusive against the modern jurisdiction than that it was an emanation from that terrible inquisition? No doubt that body made laws and unmade them. It lived upon usurpation, for the sake of tyranny. But this was never recognised as right. Sir George Mackenzie is said to have had some taste that way himself, and no particular aversion to the Privy Council; yet his doctrine (published in 1678) is this:—'It is doubted whether the Secret Council can, 'by any act or proclamation, *either introduce a crime* which can 'infer tinsel of life, or escheat; for the Parliament can only 'dispose of our lives or fortunes; and it being the representative 'of the nation, every man is, in law, said to have consented to 'what Parliament doth. I find Craig to have been of opinion,

'that *no act of Secret Council can infer a crime.** He might have stated this more simply and generally in the words of old Balfour, founded on a case decided in the year 1469,—'*Na jugeis within this realme hes powar to mak any lawis,*' What more can be said?

Accordingly, we are not aware that this principle is laid down as law, or is even announced for consideration in any legal work, prior to that of Baron Hume. None of our previous institutional writers, so far as we can discover, allude to it. What used to be *said* from the bench is not known, because it is only very recently that the cases have been regularly reported; but, so far as we have discovered, *the first time that it was mentioned in any printed book, was in the reports of the Sedition Trials in* 1793 *and* 1794. It was certainly employed at these trials freely, confidently, and without qualification, by all the judges; who not only announced it, but were so certain of its soundness, that they had no hesitation in resting the doctrines then maintained about sedition and its punishment, upon it. Baron Hume's work was under composition while these trials were proceeding, and was published about three years afterwards. It adopted what was then done, and, so far as we can see, is, as stated, *the first institutional book where this principle is set forth as law;* and the law thus promulgated by him rests truly on what passed at these political trials. The only prior precedent he refers to is the case of Gray in 1737; but unquestionably Gray's case has no application to this matter. It is said to show the operation of the inherent authority, because the court punished a prisoner for sending a threatening letter, without a statute, and though no such act had ever been charged before. But this is a mistake. He was not punished for sending a threatening letter, but for '*extortion*,'—a very ancient crime. It is true that his extortion was *partly* effected by means of such a letter; but this was used only as a circumstance in evidence or aggravation of the extortion, which (the extortion) was the only crime technically charged; and for this, an established offence, there needed no introduction of a new crime. Wherever the root of this principle may have been, the first known public fruit that it bore, was in the trials of 1793 and 1794; and this is the fruit that Hume has so carefully gathered and preserved. Very good fruit possibly, but still the *fact* is, that it was of that vintage.

This inherent authority was not called into action again, or at least not so as to attract any notice,—but we believe not at all, after being thus engrafted into the Commentaries,—till the year

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* Mackenzie *on Crimes*, tit. 1, § 3.

1808, when it reappeared on certain trials for Combination. These cases are of the deepest importance in this discussion. As illustrations of certain awkward incidents which must necessarily and universally attend the exercise of the power, they contain every circumstance that could be required.

The English Combination statute had been found not to apply to Scotland. The natural course to have followed, on discovery of this defect, would have been to have applied to Parliament to get it corrected. But, instead of this, some journeymen paper-makers were indicted at common law. The indictment set forth acts of bribery, concussion, intimidation, &c., but all as accessary to the charge of combination. Though there had formerly been some casual indications of a charge of this sort, Hume states '*that the matter had not been deliberately considered on any former occasion.*' The prisoners objected, that since there was no statute, and the charge was confessedly a novelty, the court could not make combination a crime. A very full written discussion (which remains) followed. Some of the Judges expressly avowed the principle, that it was competent for the court to introduce new crimes; or, to state it perhaps more accurately, but to exactly the same effect,—to *declare* any acts to be criminal by the common law of Scotland, which the court may think criminal. The rest adopted this principle; not only by not objecting to it, but by acting upon it. So that it had the sanction of the whole bench. But the question, and the only discussed question was, whether, under the exercise of the power, combination *ought* to have been held criminal or not? And this necessarily depended on the views taken of these confederacies by artificers. Did they amount to an *injurious wrong*? Or were they within the right of the party hired, and necessary as defences against the combinations of the hirers? With such a topic, it need scarcely be stated that the whole discussion turned upon views of political economy and commercial expediency. It *could* turn upon nothing else. There was no argument about statutes—no reference to precedents—no citation of authorities—none of that matter that usually constitutes the food of courts. What was discussed was, the principles that regulate wages, the nature and effect of *strikes*, the dangers of popular concert, the doctrines of Adam Smith, and other plainly parliamentary topics. Nothing else could possibly be discussed, considering the subject. The result was, that three of the judges thought combination, however alarming, not indictable; and that other three thought the reverse. In this situation, by the constitution of the court, the decision was in favour of the accused. The charge therefore was found *irrelevant*; that is, it was found that combination, even when connected with violence,

was not a crime. This was the law given to the lieges in 1808.

But in 1811, by which time one of the judges who had been against the relevancy had died, a similar charge was preferred against some shoemakers. The objection was renewed, and again argued, and it was announced that the court now thought that combination was a crime. However, no trial took place, because there were some technical obstacles.

But as there still was no conviction, a third '*experiment*,' as Hume very properly calls it, was tried. 'A further experiment 'was made,' by indicting some cotton weavers in 1813. These persons were accused of mere combination, but of this substantive offence, *aggravated* by violence. They were found guilty of the substantive charge, but *not* of the aggravation. And for this, the very people who had been judicially told in 1808 that combination was no crime, tasted what Hume calls 'the 'wholesome correction of our common law'—some being imprisoned four, some nine, and some eighteen months, besides finding security to keep the peace for three years.

These people had struck work. But, in 1818, even this was found unnecessary. A mere threat to strike was found a relevant charge against two colliers.

Thus, in the course of about nine years and a half, did the law vibrate between combination effected by striking work and violence; being no crime at all; and its being a crime when effected by simple union, without even striking.

Now, what was the end of all this? Just this: The decisions found that combination was indictable at common law, because, *reasoning on general principles of expediency*, it was thought dangerous to the public. Yet, in six or seven years, Parliament, *reasoning on these very same principles*, decided that it was not only not dangerous, but that in itself, and apart from violence, combination was positively beneficial. It is needless to say that Parliament was wrong; because, in the first place, upon such a subject the presumption is the other way. Secondly, this is not a consideration that can be decently urged by a court. And thirdly, suppose that Parliament was wrong; still the fact remains, that Parliament and the Court differed; and with Parliament, and consequently with that public that retains Parliament upon their side, how can the Court's views satisfy either the person convicted, or the community?

How strikingly does this piece of legal history demonstrate the risks, both to judges and to the public, at which this authority must ever be exercised by any court! For during this period, the Criminal Bench of Scotland was occupied (as it has continued to be) by men of undoubted talent, learning, and

probity. And, in particular, we cordially join in the unanimous respect with which Scotland acknowledges the merits of the distinguished and excellent person who, for nearly thirty-five years, has presided over this court. During this long period he has ever been plainly actuated by a right-minded ambition to do his duty, and to reap his enjoyment and his honour in the judicial field. Great legal experience, inexhaustible industry, good-natured patience, perfect candour, and the very purest integrity—these great qualities no one does, or could dispute. And when we add, the feelings of a gentleman, and the warmest personal kindliness, we explain the causes of that undivided popularity which made his last and highest honour, the elevation to the Presidency of the Civil Court, impart just pleasure, both to the public and to the whole profession of the law. The characters of these judges have been as good a guarantee as can ever be obtained, when it depends upon character alone, against undue stretching of jurisdiction, and in favour of this authority being exercised as well as it ever can be. It is this that constitutes the strength of the case, not against them, but against the system they are required to execute. If even their judicial qualities, operating undisturbed, could not make this system produce more satisfactory results—to what is the public not exposed, should it ever come to be worked in bad times, by bad men?

Nothing particular occurred between 1818 and 1838; when, in the case of the gaming-house, as has been already mentioned, the principle was again judicially announced as a part of our common law. We will not go into all the other cases in which this principle has been more recently acted upon. It is unnecessary; and, being so, we would rather decline the disagreeable task of criticising tribunals which well-disposed men will always cover with all the deserved reverence they can yield. But we must attest the general fact, that the catalogue of new crimes declared by the court is still receiving additions. Considerable advance, for example, has been made in raising *Attempts* up to the rank of indictable offences, merely upon the inherent power of the court.

No one can doubt, that in making these additions the court has uniformly been actuated by a laudable desire to check that union of profligacy and injury which is the essence of crime, and the existence of which the judges have always believed to be clear. But it is the *capacity* of the system that is to be looked to. In this view it is not necessary to anticipate either bad times or bad men. Let both be good. In some views, the better the worse. Good men, even when their opinion is erroneous, only feel with the greater intensity in the case of what seems to them to be evil. Are we in no danger from

being liable to indictment for whatever worthy men may shudder at? Few will differ from Lord Cockburn's statement in the gaming case, that it would be easy to fill the bench with lawyers, perfectly qualified in every respect for the judicial office, every one of whom would hold racing, hunting, or frequenting the theatre, to be wicked and injurious, and therefore criminal. All these sorts of amusements are denounced as heinous by whole battalions of pious people, who have no other folly. Railway travelling on Sunday, according to some, is not merely sinful in a religious view, but is profligate, and the cause of half of the immorality that endangers the land. What can be worse than drunkenness—the direct effects of which fill at least one half of all our jails? Conjugal infidelity! It comprises all wickedness, and the greatest public and private mischief. It would perhaps be possible to get a court, and quite easy to get a jury, of fair dealing, correct men, who would see no harm in reviving the system of punishing culpable debt, by giving the creditors dividends of the bankrupt's body.

Nor is it only violations of natural duty (with the punishment of which, in a proper way, society always sympathizes) that may begin to be repressed by indictment. Crimes may be made out by ingenious and complicated speculations, or mere policy. Baron Hume says, that the old ignorant laws against forestalling and regrating 'were long ago thrown out of the criminal code, '*by the great change that has taken place in the condition of the* '*country, and the habits and opinions of our people on subjects of* '*this sort.*' What hinders these laws, especially as they have the wisdom of our ancestors in their favour, to be revived, if a change should take place on subjects of this sort in the opinions of the judges? There is no part of political or commercial economy that may not be judicially controlled. The gaming table was not worse than railway gambling. There needed no statute to put down lotteries in Scotland, for they were justly, and generally, held to be wicked and pernicious usury, according to the old, and indeed the still prevailing feeling. Multitudes of other examples suggest themselves,—bad enough in retrospect, fraught with all possible alarm in anticipation. Where it is the right, and consequently the duty, of a court '*to chastise* '*all wrongs and disorders, as the state of society brings them forth,*' its sphere of operation is boundless.

It is the term *wrong* that misleads some people. They take a simple case of great injury, inflicted from great wickedness, and ask, is there to be no punishment for this? Certainly not, *if Parliament thinks that judicial punishment is not expedient, or does not say that it is expedient.* It is surely not every hurtful

wrong that ought to be reached by Indictment. The policy of making an act indictable, is not decided by merely settling whether it be what Baron Hume calls 'obviously of a criminal nature.' There are always other considerations of a legislative character. For example, few things are more hurtful, or more intensely abhorrent to all our moral feelings, than incest. Accordingly, it is punishable in Scotland by death. But in England, whatever it may be ecclesiastically, it is not indictable at law at all. Here is a great, intelligent, and pious people, in whose legal sight incest is no crime. Let not the law of Scotland here hold up its hands in astonishment. What is worse than seduction? It implies a gross and cruel outrage on public morality, and the greatest possible domestic injury,—it proceeds from sheer villany; and, in its nature, it is just as easily provable as any conspiracy or fraud; and accordingly, when civil damages are the object, it is proved like any other fact. Yet the law of Scotland concurs with the law of England, in holding this not to be an indictable offence. Many similar instances might easily be given. However the legislature may deal with such matters, the preliminary question is,—ought the legislature to stand aside, and leave them all to be settled by a court? We feel almost ashamed of discussing, or of even stating, such a point.

The tribunal in which these formidable powers have been decided to be vested, consists of seven judges; but three are a quorum; and, on circuits, a single judge has the powers of the whole. This Court, even on occasions of the utmost difficulty and importance, and attended by great difference of opinion, has no power to hold any authoritative consultation with their civil brethren. In Scotch *criminal* matters, there is no appeal to the House of Lords. The legal proceedings of this, the most remote, and the best ordered, of the three kingdoms, attracts little of that parliamentary attention which is monopolised by faction and disturbance. So that it is the authority, whatever it may be, of this single court that gives these judgments their weight. The jurisdiction which they uphold has been conferred or recognised by no statute. It has been acknowledged by no other tribunal. It has been confirmed by no appeal. It has been countenanced by no parliamentary approbation. It has never yet been so discussed as that its existence is generally known to the public.

Whether the public will choose to submit to it, now that it has been discussed, remains to be seen. In making up its mind, it is most important to reflect on this,—that the tendencies of a bad system always become worse after it is known to be confirmed. So long as odd and plainly dangerous powers are suspected,

by those who exercise it, to be viewed with jealousy, it will naturally be exercised, not from cunning but from prudence, in such a way as that its ultimate capacities may not happen fully to disclose themselves. But it is the final tendencies that must always be anticipated;—when the power shall either be publicly sanctioned, or acquiescence and apathy shall make it plain that neither the public nor its guardians care any thing about the matter. It is only after the power of declaring new crimes shall come to be settled as the *right*, and consequently the *duty* of the court, and due time shall be allowed for this principle to operate, and some crisis shall call it into full activity, that our true, may we not say awful, situation can and will be discovered. There are facts—before partly alluded to—connected with that prevailing fanaticism which so often at present makes reflecting men muse and marvel, which seem to show that it would not be wise any longer to delay some Parliamentary notice of this portentous authority. If it shall be thought by the legislature that its existence is unsafe, let this be legislatively said. No redress can be expected from the court; for it must adhere to what it believes to be the law. It can only proceed therefore from Parliament. Whatever the private opinions of individuals in Scotland may be, they must hold this to be the law, because so the law's appointed expounders have said. But there are higher sheaves, which stand upright, and to these all other legal sheaves must make obeisance. If it shall appear to the great lawyers by whose light, in such matters, Parliament walks, and whose brightness is not apt to be dimmed by the circumscribed atmosphere of a remote court, that there is no legal foundation for this extraordinary judicial exception to the general system of the constitution, then this fact may be declared. If it shall be thought that this would be inconsistent with the deference due to the supreme local tribunal, then what has been decided to be the law may be changed; by its being set forth—That whereas it has been determined that the Court of Justiciary has the power of declaring new Crimes,—and whereas this power is inexpedient,—be it enacted that it shall no longer continue.

Any how, if the power be thought dangerous, let it be checked. As usual, every additional hour of its continuance increases the difficulty of getting it removed. No court can have too much native vigour. But whatever stock of this quality any of them may be possessed of, they will find that it may be all exhausted in interpreting and applying the laws, without taking the trouble to make any.

ART. VIII.—*Das enthüllte Preussen—(Prussia unveiled.)* 8vo. Winterthur: 1845.

2. *Die Europaischen Staaten nach ihren Innern und Aüssern Politischen Vorhältnissen—(The States of Europe in their Internal and External Relations.)* By BULOW-CUMMEROW. 8vo. Altona: 1845.

THE local position of the kingdom of Prussia has long rendered it an object of deep interest to Continental statesmen. Conterminous at once with Russia and with France, it occupies the dangerous post of honour in the preservation of the peace of Europe. The most delicate questions of present and future diplomacy depend on its strength and prosperity. With one frontier, it abuts on the vast Empire which lies between the East and West, and whose progress all thinking men regard with anxiety; with the other, it touches on the most sensitive point of French ambition, and holds the course of the recovered Rhine. It is the duty of the Province to which the name of Prussia especially belongs, to resist the encroachments of Oriental force and semi-barbarous power, on the variously developed intelligence and unequal but extending liberties of the European family; and it is the task of those Prussians who border upon France, to preserve a German government to men speaking the German tongue, against the unhappy spirit of territorial aggrandizement which still torments a reflecting and great people. It is Prussia to which hasten, in a day's journey, the thousands of English visitants that gaze with wonder and delight on the towers of Cologne Cathedral; and it is Prussia, too, which receives the Russian deserter, the flying Pole, and the wretched Jew, whom an Imperial ukase has hunted from his home.

Between these extremities lie many provinces conquered in war, or won by diplomacy, or devolving by heritage,—now all united in one steadfast monarchy, containing men of the profoundest learning, the boldest speculation, and the most ingenious industry. The physical advantages of the people are enhanced by consummate and continual military discipline; while their mental energies are tried in controversies on subjects of which, in this country, we hardly speak above our breath, and their perceptions elevated by an artistic cultivation, which, late and feebly, we are attempting to copy. Free to think, ready to feel, able to fight,—what can be wanting to the healthy social state of this great people? What is still necessary to produce that state of general internal contentment, without which outward

prosperity is a delusion, and with which real national calamities become impossible? What is still the unsatisfied desire that rankles at the heart of the nation—turning its kindliest feelings into gall, and blunting the edge of patriotism; changing the poet into the satirist, and the philosopher into the pamphleteer; making wise men foolish, and wicked men mad; distorting graces into bribes, and kind words into falsehoods? What is the object of hopes so long delayed, of prayers so long neglected, now fast accumulating for the evil day of vengeance and despair? We answer, and they answer—Political development under Liberal Institutions.

The books at the head of this article are fair types of the two classes of political writings, which issue in multitudes from the permitted press of Germany and the forbidden one of Switzerland. Mere quotations from them would be of little interest to the English reader; although we may safely recommend the second work as an evidence how deeply the constitutional want of Prussia is felt by a man who has not a spark of Radicalism about him, and who, in a constitutional country, would doubtless be a high Tory. It contains, besides, an interesting view of the mutual relations of the different continental states; and is the first work we have seen which explains, with tolerable fairness, the real spirit and tendency of the different German governments. The other is one of those Radical publications whose unscrupulous violence renders one suspicious of the truth of their allegations; but which, at least, proves what things are asserted, and what believed, of the present Prussian government. It is mixed up with that kind of Aristophanic satire of which the 'Political Accouchement' of Prutz is the best specimen, and which mercilessly caricatures all Prussian authorities, political and intellectual. But it is neither on political nor intellectual ground that the contest between the government and public opinion of Prussia has practically begun. Suspicion, however vague, of an interference of the state with the freedom of individual religion, has put an end to the patience which has endured in gloomy silence so many political disappointments. For that, at least, Northern Germany believes herself to have won at the Reformation; and she guards it as a treasure almost sufficiently precious to make up for the deprivation of other liberties. It is in this sense that Prussia looks on Frederic the Great as the continuer and consummator of the work of Luther; and hence that hero-worship of his name which so much astonishes the foreign observer. We English, especially, have so entirely forgot that in 1757 Frederic was hailed throughout this country as 'the 'Protestant hero,' whose head even became a favourite sign at

country inns, and we are so accustomed to look on him as one of the most immoral and uninteresting of conquerors, that the affectionate reverence paid to his memory,—the publication of his works, under the auspices of a religious sovereign,—the erection, at the public expense, of the colossal monument by Rauch, which will soon overtop the trees of the Linden-walk,—are facts quite incomprehensible, without the key, that he is regarded as the assertor of the principle of freedom of thought, and as the maintainer of religious liberty. A freethinker himself, he allowed others to be religious in their own way,—(as he showed by protecting the Jesuits when expelled from Catholic countries,)—and thus the very part of his character which is most repulsive to others, is contemplated, if not with satisfaction, at least with indifference, by those who believe that he thus established for Germans that individual right of religious and philosophical opinion, which has been, and is as dear to their moral nature, as ever personal freedom was to the English, or equality to the French people.

Thus, in Protestant Germany, the ordinary acts of outward religious communion have fallen into much disregard; it is so generally assumed, and so literally acted on, that a man's religion is an affair between him and his conscience, that formal public worship has lost much of its significance; and voluntary societies,—like the 'Friends of Light,' or the 'Gustov-Adolf's *Verein*,'*—are the only communities that come together under the impulse of a real and hearty sympathy. The late King's attempts to establish uniformity of public worship, were most obnoxious to the religious part of the nation; and were only partially successful through the religious indifference of the larger portion to public worship of any kind. The present sovereign's known admiration of the English Church, and the notion of something similar being possibly introduced into Prussia, through the channel of the Jerusalem Bishopric, gave the first blow to the popularity of a young reign; and has aroused a suspicion of similar designs, which meets the government in every direction. The King has lately attempted to enforce a stricter observance of Sunday; has encouraged the in-

* This society was established in 1832, on the second centenary of that hero's death, for the purpose of uniting the interests of all earnest professors of evangelical Christianity. Austria and Bavaria here opposed to the utmost. The King of Prussia declared himself the head of it in a Cabinet order of February 1844. Its present annual revenue is about 24,000 dollars, and is chiefly spent in supporting Protestant ministers in Roman Catholic parts of Germany.

troduction of Evangelical Sisters of Charity into the Hospitals; and ordered the re-establishment of an old Catholic Order of Benevolence on evangelical principles. He has desired, without success, to limit the facility of divorce; and, above all, he has checked the public assemblages both of the German Catholics, and of the before-mentioned 'Friends of Light.' The municipality of Berlin has lately taken the bold step of remonstrating with him in terms implying fear of an invasion of their religious liberties, and hinting regret at his own religious professions. Their Memorial was coldly returned for reconsideration; but the municipality, knowing themselves to be backed by public opinion, pressed it again on the King, who this time replied in energetic words that have been circulated throughout Europe. In admirable language, (for he is an excellent speaker,) he avowed his respect for the religious party in the country, and his determination to support them; and he added reproaches to the municipality for their neglect of the spiritual destitution of Berlin, and their refusal of a church to the Anglican communion. The municipality retired apparently defeated, but in a short time sent in a rejoinder,—citing the 'Cabinet order' of the late King, in which he desires the number of churches in Berlin to be reduced, and showing that they had offered two churches to English congregations. The Protest and royal Answer have been freely published, but this rejoinder was suppressed by the Censorship. Again, the erection of a splendid Christian Basilic, in connexion with the Palace, is a darling project of the King's; but it is the object of as much horror as a republican would feel at the fortifications of Paris. And it is interesting to trace this sentiment of religious independence, where we should least expect to find it, in the Roman Catholic church. The habits of ecclesiastical submission have not preserved even that portion of the inhabitants of Prussia from a sense of spiritual liberty. The pilgrimage of Trèves * was not only a display of peculiar religious sympathy, but a popular triumph, and a political demonstration; and, singularly enough, this very celebration of religious independence has been the means of arousing, at the opposite extremity of the monarchy, a demand for liberation from what is here held to be a spiritual bondage. The localities of these two events are not without their significance. The liberal development which has taken place in Silesia and Prussia Proper, is owing to causes exactly opposite to those which have excited the western population. If the one has been pleased with images

* See Article IV. of this Number.

and remembrances of neighbouring liberty, the other has been terrified by the constant presence of contiguous tyranny ;—if the one has been gradually charmed into habits of independence, the other has been forced into the consciousness of political rights by the sense of immediate danger from the nearness of despotism.* And if the authority of Gallic culture has made itself felt in the Rhenish provinces, the philosophy of Kant (which a satirist has called 'the German guillotine') has deeply engrafted its moral influences on the minds of the educated classes in those towards the East; while the nobility of the latter departments, being rich, independent, and on good terms with the peasantry, are just as jealous of despotic monarchical power, and just as anxious to take a part in the interests of public life, as are the industrious and commercial citizens, who enjoy on the banks of the great artery so many privileges of constitutional liberty, and are zealous to communicate those advantages to the rest of their fellow-countrymen.

The hope of getting any good by aspiring to a political unity of Germany, seems now to have confined itself to the industrial movement, and the prospects of the *Zollverein*. If any thing could have checked the progress of political discontent, it would have been this new direction given to the thoughts of the nation. It was so heartily taken up, that the Radicals feared that all political interests would be merged in the material; but this apprehension is vain—the commercial spirit bringing with it a livelier sense of the necessity of political freedom for its own safe development. Enough of the old national spirit remains to sustain the country against any common enemy ; but it seems now almost resolved, in Prussia at least, to defer the great idea of unity for the present, and to concentrate their energies upon the political developments of their own country. And what better foundation could be laid for some great political future for united Germany, than a constitutional system working harmoniously through united Prussia? No two provinces of Germany can be more different in manners, race, and local

* All the common associations of the war of independence between Prussia and Russia have utterly vanished. At the review at Kalisch, it was difficult to prevent the troops from coming into open collision. The late King of Prussia was repeatedly solicited to raise fortifications on the frontier towards Russia, and their erection by the present King has been highly popular. It is enough for a member of the royal family to be known to be in close intimacy with the Russian court, to make him an object of odium to the people. Nowhere is the popular sympathy for Poland more lively than in Prussia.

interests, than Old Prussia and the Rhine, or Pomerania and Saxony; and were these once united in a federation of freemen, what might not be hoped for at some distant time, when every German state shall, in its own right of self-government, consent to that common polity which shall be fittest for the welfare of the whole?

The poet Freiligrath, in his energetic verses, has represented Frederic the Great looking with passionate envy from Paradise to Potsdam, yearning to give freedom and happiness to Prussia, by means of liberal institutions. No sovereign was less likely to sacrifice his individual power for the general good of the people. In his days, indeed, a monarch might talk and write about freedom, and yet go on governing like Frederic himself and Catharine of Russia; but the royal amateurs would now be taken at their word, and their pleasant speculations turned into anxious realities. Hence, the present King has brought upon himself a large amount of suspicion by the liberal professions of the first years of his reign; and is now suffering from a reaction, which must render tenfold more difficult all his attempts to satisfy his subjects.

It is not to be denied that a great opportunity for well-doing was lost at his accession to the throne. All that was required was to start in the right direction, and to follow up free and generous words by holding out means of future political expansion. Constitutions are not to be *improvised* by Kings, any more than by Philosophers, and men like the Emperor Joseph are at least as dangerous as Jeremy Bentham. It hardly becomes so highly-educated and thoughtful a man as the King of Prussia, to imagine, that by keeping a Constitution in a drawer, and daily altering and even improving it, he can really adapt it completely and at once to the wants and wishes of his people. The Decree of 1815, which established the provincial assemblies, 'according to the wants of the present time,' clearly and distinctly engaged to establish a general representation, entrusted with all powers of legislation and taxation. There has been much controversy on the validity and meaning of this engagement. The monarchical party maintain, that it only expressed the intention of the King to give to his people as much share in the government as he thought advisable; and, by a gradual process, to develope the provincial assemblies into a more general organization; and they have found some unexpected allies, in such Ultra-Radicals or Chartists as the author of an article on 'the real meaning of a Parliamentary constitution,' in the *Berliner Monatschrift* of 1845. He maintains, that the King could no more bind himself irrevocably by any such Decree, than one Parliament

in England or France could bind another;—the King's will, in fact, representing the ever-changing circumstances of the country, and having nothing to do with the obligations of personal honour. The democratic writer looks on a Parliamentary constitution as the triumph of the power of wealth—as an aristocracy of property substituted for that of rank, and likely to be just as oppressive. But it is undeniable, that the great mass of the Prussians have regarded this Decree not only as a promise, but as, in fact, the reward of the great energy of the nation, shown in the War of Independence. Nor, when another Decree of June 1823 declared, 'that the projects of all laws regarding the right of persons 'and property should be laid before the provincial assemblies,' did the King imply that he believed himself absolved from his engagement; for he adds, 'as long as no general parliamentary as-'sembly is summoned.' The King, in all probability, never gave up the design, but believed himself compelled to defer it indefinitely, —rather from reasons of foreign than domestic policy,—though some of his ministers evidently did all in their power to curtail the petty liberties already granted. The Congress of Carlsbad, and the whole system of the Holy Alliance, opposed itself most strongly to any constitutional establishment in Prussia; and in the Last Will of the late King, which, from the deep filial reverence of his successor, and the general regard shown in Germany to the wishes of the dead, was likely to have considerable authority, he says not a word about this unfulfilled pledge; but solemnly enjoins his son never to forget his close relation to, and common interest with, the governments of Austria and Russia. Thus, the present King was met, on the very threshold of his reign, by many external influences which nothing but a mind, strong in its high and honest intentions, could resist. There were the appeals, and possibly the threats, of Russia, enforced by near domestic ties in a family remarkable for natural affection; and though Herwegh, in his emphatic lines—

> 'Shield us not only from the French,
> But from thy Brother—from the Czar!'—

uttered the deep feeling of the nation, yet Ural gold and Sclavonic decorations had also many advocates about the royal person. There were the solemn entreaties of Austria, conveyed through the Nestor of diplomacy,—warnings of the immense responsibility Prussia would incur if she gave the example of the abandonment of the monarchical principle, with Bohemia and Hungary ready to burst into political tumult,—it might be to claim their national independence,—and intimations that Prussia was more interested, from the position of her Rhenish provinces, in the cordial political co-operation of Germany, than any other

power; while, from the constitutional governments of Bavaria and Baden, there came little or no encouragement to adopt the same internal policy;—but rather hints and notices of dangers incurred, and difficulties raised by the advocates of liberal measures, and of the dissatisfaction of the sovereigns, who looked with envy on the independence of their absolute brothers. To these external solicitations may probably be added the inward consciousness, that, by divesting himself of his autocratic power, he was limiting, to an indefinite extent, his power of doing good; and transferring to new, and perhaps incompetent hands, that task of government which he might himself hope to exercise in a magnanimous and unselfish spirit.

The Provincial States in Prussia have little answered their purpose, if they were intended as an introduction to wider constitutional forms. Although no law has been enacted in defiance of their objections, so little attention has been paid to any of their positive recommendations, that they have lost any *prestige* they may once have possessed: they have very lately obtained permission to publish the subject-matter of their debates, but without the names of the speakers, which has so much to do with parliamentary interest; they are split each into three or four ranks, (*Stände*) the nobility, (*Ritterschaft*) the towns, the landowners—elected, and voting, separately,—with the addition of some great families and corporations personally represented; so that they can rarely act together with that confident sympathy which produces public spirit, but are distracted by the jealousy of class distinctions. When, however, the peculiar formation of the Prussian monarchy is considered—its combination of peoples and interests under one national name—its straggling form and strange divisions—and its absence of common historical associations—we must come to the conclusion, that in any well considered constitutional arrangement, large and distinct powers must be entrusted to local interests;—in one word, that the American, rather than the English polity, is that to which Prussia should look for instruction and analogies. It should be the chief object of the Prussian constitution to give a simultaneous action to the provincial and central legislatures; to prevent the oppression of the interests of any one province by those of others; and, at the same time, to fuse them together sufficiently to inspire them with the continual sense of the unity of the Prussian nation;—to keep alive their separate associations, and yet blend them into one common patriotism. The court of Berlin by no means supplies this want,—even as far as the upper classes are concerned. During the late King's reign the court was entirely composed of the small nobility of the duchy of Brandenburg; and even now the stranger looks in vain for any such assemblage as might be ex-

pected to attend the sovereign of so large a dominion. The few members of the Silesian, Pomeranian, or other provincial aristocracies, who come to Berlin, find themselves, as they conceive, neglected for the local and habitual residents: they are criticised, in their dress and demeanour, by the Voltairian wit (if the expression may be used) which still reigns in that capital, and gladly return to the comparative dignity and independence of their country estates.

Neither can it fairly be said, that the royal name and authority exercise sufficient power in Prussia to render any other centralization unnecessary. The relation of prince to people, in all German history, has been close and intimate wherever it has been effective. The notion of divine right, of *l'etat c'est moi*, has continually been kept in check by the sentiment recorded by Tacitus—*Nec regibus infinita aut libera potestas, et duces exemplo potius quam imperio.* And it is of necessity that the larger portion of the subjects of the King must regard his ascendency as an historical accident. In theatrical exhibitions, in courtly songs, in literary diversions, Prussia and its sovereign may be represented as one homogeneous power; but every man, from that sovereign down to the peasant, perceives the fiction and the assumption; and ought, if really patriotic, to yearn after institutions which would afford a tangible basis of national union, and give to the King that real hold on the minds and hearts of all his people, which titular formalities can never impart. A constitutional King of Prussia has none of that ancestral majesty to abandon, which might have made the rulers of France, or Spain, or Austria, cling fast to absolutist traditions. The proud recollections of his forefathers are all personal:—the Grand-Master Albert consulting Luther, and advised by him to throw up the rules of his order, and convert Prussia into an hereditary principality; the thirteen battles of Frederic, whose three-cornered hat and baton are to Prussia such relics as Napoleon's to imperial France, such are the associations which require no parade of purple and ermine to keep alive, but which are rooted in that domestic interest felt by the Germans for their royal houses; and which, under constitutional forms of government, preserve to the Crown a safer and more legitimate authority than could, perhaps, be exercised in countries where the throne has been rather the object of fear than of love, of blind homage than rational regard.

'The military,' says Horace Walpole, 'are seldom captivated by any franchises but their own;' and thus the predominance of moral force is possibly no agreeable prospect to those who look on Prussia as a barrack and drilling-ground. But the army in Prussia is no special class; the possession of arms for

the time being is the only distinction between the soldier and the citizen; the continual intercourse between the army and civilians also operates towards keeping up the best feeling between them, —making it very improbable, that in case of convulsion the soldiers would take any decided part against their fellow-citizens: a strong popular demonstration in Prussia, in fact, would at once be a revolution. The old Prussian army was of a highly aristocratic character; the victories of Frederic were won by the officers, who were all of noble birth, and thus earned and deserved the respect of the people. But in the late wars, the parts were entirely changed; the people who filled the ranks fought with eminent vigour and courage, but often in vain, owing to the incompetence of the officers who led them. The army thus learned to respect its own bravery above the science and sagacity of those who claimed to guide them; and the advantages which are still given to noble birth, in promotion and decorations, are very unwillingly submitted to by the service in general.

But the class to whom a constitutional form of government would hardly be acceptable, is that numerous and influential body of subordinate functionaries,—the thousand hands of the Briareus of the Prussian state. So completely are all official processes subdivided and formalized, that from the highest to the lowest, an average mechanical accuracy appears the sole public object in view. 'Have you heard who is to be the new minister 'in place of the dead one?' said a Berliner *Eckensteher* (a Prussian 'Sam Weller') to his comrade. 'I didn't know there 'was to be one,' said the other; 'I thought the widow would 'continue the business.' These *Beamte* are the objects of continual hostility and sarcasm on the part of the liberals, as forming a body apparently interested in preventing constitutional arrangements; and an especial attack has been made on them by one of their own number, of the name of Heinzen, whose work has been suppressed, and the author (in his absence) condemned to a year's imprisonment in a fortress. The book contains some strong writing on the degrading effects of this life at the desk, with a decoration for its aim and goal;* but he brings forward but a poor array of facts to prove the unworthiness of the individuals, and takes refuge in such vague allegations as that against the forest-warders,—that they have shot a large number of poachers, and burned their bodies to avoid detection. Indeed, the incorruptibility and good conduct of the body of functionaries is undeniable.

* 'There are two things,' says the *Eckensteher* 'that a *Beamte* cannot avoid—*Death*, and the *third class of the Red Eagle*.'

It is said, and we believe with truth, that the King of Prussia is anxious to discover and follow public opinion in his conduct of public affairs. But without a Free Press public opinion can hardly be said to exist,—at least it cannot make itself known and understood. The concession of a Free Press would have gone far to relieve the Prussian government from its present difficulties; it would have been a guarantee to the people, that whatever delay might take place, the advance would ultimately be in the right direction; it would have enabled the King to test the influence and to inquire into the objects of the different parties in the state; it would, if accompanied by a law against slander and calumny, have mitigated that habit of personal abuse of public men which has now reached to a painful extent; and it would have prevented that unseemly contest between a literary monarch and literary men, which has tarnished the character of the present reign. A Prince of general taste and varied accomplishments, appears in a most unnatural light, when inflicting pain and annoyance on writers for works which, in other countries and even in other parts of Germany, would be published without government interference; and it is a necessary consequence that the feelings excited are proportionably bitter. 'That comes of coquetting with poets!' exclaimed a neighbouring sovereign (who politely designates literary men as *Federvieh*) when Freiligrath resigned his pension and attacked the King; and of course there would be no love lost on the side of the poet who had been coquetted with. For although the Court of Berlin is Brandenburg, the University is German; freedom of literary and religious opinion has been successfully maintained there, to an extent that England or America might admire. Tieck from Dresden, Schelling and Cornelius from Munich, Rückert from Erlangen, have been called to Berlin by the royal will. The brothers Grimm, the profound philologists, when driven from Göttingen for political opinion, found here a hospitable refuge. The King and Court regularly attend Academical Lectures requiring a high standard of thought and information for their comprehension. The 'Order of Merit,' from its judicious limitation of members, has become an object of ambition throughout Germany; and attracts the most remarkable European names in art, literature, and science, under the Presidency of the King. Humboldt and Bunsen are among his confidential friends and advisers; and, we may ask, whether the fetters of a Censorship are not in almost ludicrous contrast with such pretensions and connections? Is it possible to draw so distinct a line round religious or political ideas, as to keep them in bondage, and let all others go free? Do not many of

the most interesting philosophical, and even literary discussions of our time, fall into, and mix themselves up with social, religious, and political questions? Is it not, in fine, a leading characteristic of modern thought, that we are learning to consider mankind more in the concrete, and to get rid of the sharp lines of distinction in the ental faculties, as well as in the gradations of society?

The modifications of the Censorship, lately introduced, only bring out more prominently the absurdity of the institution in a country like Prussia, where every body reads, and most people write. As a check to caprice, a tribunal of Appeal was established, which was to determine in the last resort whether any thing was improperly suppressed; and at the head of it was placed a man of the highest character for integrity and intelligence, and who had the singular good fortune to retain this reputation even in that odious office. And yet what is an Englishman, and still more a Scotchman, to think of a system, under which Dr Berneman could pronounce a literal (and excellent) translation of *A man's a man for a' that*,' by Freiligrath, as unfit for publication, on account of 'the hostile opposition between different classes of 'society implied in it!'

Even the careful judicial forms used in the condemnation of books, only increase the apparent folly: the inquisition regarding one of the books of Edgen Bauer, (the *Contest between Church and State*,) which he managed cleverly to set down in short-hand and print at Zurich, presents one of the greatest abuses of jurisprudence ever exhibited in a court of law. It is more like the discussion of a theological and political thesis than a legal investigation. A passage is pronounced blasphemous — 'Possibly,' answers the author, 'but do you mean *subjective* or *objective* 'blasphemy?' 'We mean,' says the court, 'that you have out-'raged the religious feelings of the community.' 'Perhaps 'so,' replied the accused, 'but the community have outraged my 'logical sensibilities by their unreasonable theology, and I have 'a right to retaliate.' Can any good come from such legal procedure,—if indeed if can be called legal—as this? *

Another frequent evil, consequent on such restrictions, is the prominence given to bad writings, which, left to themselves, would never rise into notice, but which come to be eagerly sought after. No one needs hawk about 'forbidden books;' they swarm on every table; they are bought at the booksellers under sham

* Every book above twenty sheets is exempted from the Censorship, but must be sent to the Police before publication; and, if forbidden, the whole impression is sent to the paper-mill.

names, and put down as such in the account. A new volume of Jacobinical poetry is conventionally entitled 'Spiritual Songs;' a sarcastic drama becomes 'Æsop's Fables;' a diatribe against the King, 'Cæsar's Commentaries;' and these are all classed together, and all read as 'forbidden books;' and all effect infinitely more harm than they would or could do, if left to themselves and their own merits.

The authority of the Diet is often brought forward as compulsory; and it is contended that it would be practically impossible to allow a full and free discussion of the internal affairs of the state, and at the same time not run the risk of offending foreign countries. It is certainly decreed by the Diet, that if any member of the *Bund* thinks its authority insulted, or its peace endangered by any publication in another state, and cannot obtain satisfactory reparation by diplomatic means, the Diet will appoint a Commission, which shall have the full power of suppressing the work, and, if periodical, of preventing its continuation. The smaller states might indeed have some excuse in the fear of offending against this regulation; but it is in these states that the press is the freest, and books, refused in Berlin, are daily printed at Mayence and Darnstadt. Prussia can plead no such apology; she is far too powerful for the Diet to attempt interference; and we should not envy the Commissioners of the Diet who came to Berlin for the purpose of enforcing such a regulation, and checking the expression of public opinion. M. Thiers closes his account of the unhappy effects produced on the mind of the First Consul by the publications of Peltier in London, by the exclamation—'Heureux les pays accoutumés 'depuis longtemps à la liberté! ces vils agents de diffamations 'y sont privés du moyen de nuire: ils y sont si connus, si mé-'prisés, qu'ils n'ont plus le pouvoir de troubler les grandes 'âmes.' The press in Prussia will not, in all probability, escape the vices of the infancy of freedom; the government, the royal family, the crown itself, will at first have much to bear; but a manly disregard of these ebullitions will bring its own reward. A virtuous, kind, and intellectual monarch like the present King of Prussia, can well afford to trust his reputation to his people; and there is no saying what effect would not be produced if the public came to consider themselves as the authorized vindicators of royal honour and social order; and if those feelings of justice, which now side with the oppressed writer, were exhibited on the part of the calumniated and maligned. There are certainly other changes which would result from the liberty of the press in Prussia; the arbitrary authority of the police would be put an end to; and open courts of justice, with, perhaps, trial by jury, would be substituted for secret and discretionary powers

of judicature. In the present vigilant state of the public mind, any regular action of the *haute police* is impossible; as was very lately sufficiently proved by the effect of the arrest of the two Liberal Deputies of Baden. These gentlemen—one of them, Adam von Izstein, the best parliamentary orator of Germany—were on their way to visit Jacobi of Königsberg, the author of *The Four Questions*, and other liberal pamphlets. Whether it was supposed by the wisdom of the Berlin officials, that communications between these men could be stopped by such means, we will not say; but it is a fact that they were arrested the morning after their arrival at Berlin, (though their papers were all in order,) and conducted back to the frontier, with orders to repass it at their peril. Von Arnim, the minister who issued this order, and who represented the aristocratic party in the Cabinet, has since retired; and given way to Bodelschwing, a man of high promise, both as a liberal statesman and public speaker. It is not known whether these events were to one another as cause and effect; but it is certain that the storm of indignation raised not only throughout Prussia, but in other states,—and the popular cry, that no such invasion of the rights of individual strangers had taken place since the murder of the French Delegates at Radstadt,—was very likely to have brought about the dismissal of the minister who had incurred the immediate responsibility of the act. There is no evidence that it was done by the command, or even with the permission of the King; but from the time of M. de Haugwitz to the present moment, there has always been a habit in Prussia of making ministers the scapegoats of political faults and princely unpopularity.

The Bar in Prussia holds so high a position in public esteem, and is considered, even now, to be so independent of patronage and favour, that it could not fear the fullest publicity of legal proceedings. Except for the material difficulty of erecting proper buildings, there seems no reason why, in criminal cases at least, open trials should not immediately take place. The lawyers may begin to acquire the habit of public pleading now, as well as at any other time. A very strong dislike to the punishment of death is growing up in Germany,—much heightened, no doubt, by the secresy of trials; and the infliction even of lesser penalties is frequently regarded with popular suspicion. In each of the annual publications, *Deutsches Bürgerbuch* and *Vorwärts* for 1845, is a strong article on that subject;—recounting many very painful cases of false accusation, condemnation of the innocent, and horrible cruelties exercised by the subordinate ministers of justice;—all which are placed to the account of the secresy of the procedure. Open courts would possibly not remedy all these evils; but, if accompanied by

trial by jury, would obtain that assent of public opinion, without which the best juridical system is nothing worth. The scientific jurists of Germany are generally adverse to the introduction of the jury; and abstractedly, as a means of the attainment of truth, it may indeed be difficult to defend it; but in its secondary effects,—as a part of the political education of a people, as a means of producing general confidence in the administration of justice, and the necessity it imposes on the judge to attend to and follow all the bearings of the case,—it amply deserves the attachment with which it is regarded in this country. The assimilation to our mode of procedure, would also tend to abolish in Prussia an odious remnant of that ancient penal system, which a French writer has aptly designated as *la chasse aux crimes*—viz. the extortion of confession from the accused, by every means short of physical torture; and it is confidently asserted that even this is not unknown within the prisons. One of the heads of the police at Berlin is held in high estimation for the ingenuity and cunning with which he entraps the unwary, terrifies the timid, and excites the conscientious to a confession of crime. A valid confession must take place before two witnesses; but the third person can come dexterously in at the right moment, or may remain unobserved during the disclosure. Circumstantial truth, no doubt, is frequently obtained by these means, but at what a sacrifice of morality!—the time of the officers of justice is saved, but by what an infraction of the first principles of jurisprudence!

No longer can the literary men of Germany be accused of living in the clouds of metaphysics, and neglecting the pressing interests of their time. Abstract theories,—even philological and historical investigation,—are comparatively neglected;—Boeckh, the scholar, addresses his students on the indispensability of perfect freedom of communication of thought to make a nation great and happy. Neander, the Christian philosopher, encourages and instructs the Free Church of Scotland. No poetry is now read which has not a political meaning; and this element has a tendency to give a vague declamatory tone to what should be pure works of art.

We would not wish to conceal the dangerous side of the picture. There are Prussians of grave imagination, who look forward with the saddest anticipations to the future condition of their country, and speak of it as thoughtful Frenchmen might have spoken of France in 1789; and, although this may not be general, yet it is undeniable that a chronic discontent is rapidly gaining ground,—most painful in itself, and perilous to the peace of the nation. There is very little of what we are accustomed to look for as German *bonhommie* in the character of the inhabitants of Central Prussia; they are an unenthusiastic

careful set of people; but who will be resolute enough in their demands when they once determine to make them. Royal authority is no longer an object of reverence; and the laws themselves, being considered in no higher light than as the expression of the royal will, are gradually losing their salutary influence. In bitter contrast to the less powerful kingdom of Wirtemburg, where the inscription on one of the public buildings,—'Happy the land where Love is the subject, and Love 'is the Lord,'—hardly exaggerates the popular contentment, Prussia, unconstitutioned, will soon become a country ruled by suspicion and submitting with disgust; and at last sullenness will burst into rage, and political rights be forcibly wrung from the hand that withheld them. The people will enter on the task of self-government without gratitude to their sovereign,—without distrust of themselves,—without reverence, as without humility.

This prospect is far other than that which delighted the hopes of so many patriotic Germans five years ago. We, in our insular independence, members of a nation with no frontier but the subject ocean, and with the long past of

'a settled government,
Where freedom broadens slowly down
From precedent to precedent,'

may hardly understand the solemn interest with which so many thousands of German race regard the alternative,—whether the liberty of Prussia is to be gained by fair concession, or rude force,—as the question on which the calm or violent course of their political affairs may lastingly depend. But, though mere spectators of the scene, we cannot be indifferent to what passes upon it. Nor is the historical destiny of that Ruler, whose gracious hospitality has been so lately shown to our own, and whose people seemed for a while to forget every grievance and merge every difference in the cordial and affectionate welcome of the British Queen, without its interest. A few years will indeed determine whether a man on whom Providence seems to have bestowed all those gifts which should endear a constitutional monarch to his subjects, shall accept a life, perhaps of labour, but of labour fulfilled with success—perhaps of self-denial, but of self-denial consummated by the satisfaction of being the benefactor of millions; or whether the future historian of future Germany shall have to record, in the words of Tacitus, how happy, how useful, another sovereign than the Emperor Galba would have been—*omnium consensu capax imperii nisi imperâsset!*

ART. IX.—*The Age of Pitt and Fox.* By the Author of 'Ireland and its Rulers.' London: 1845.

THE names of Lord Grey and Lord Althorp will be for ever associated with a memorable struggle and a peaceful victory. The year which is about to close has seen both these statesmen expire—the one full of years, sinking gradually into the grave; the other, in the full possession of bodily vigour and mental activity, swept away by a sudden inroad of disease. We are unwilling to allow the last scene of funeral honours to terminate without offering our chaplet in the resting-place of these honoured men. Personal veneration would be enough to prompt this voluntary homage. But a duty to the public seems to render that imperative, which, in other circumstances, would be merely a grateful alleviation of sorrow. It is the interest of the country at large that its rulers should be pure and high-minded—lofty in their objects—faithful to their convictions—steady in their attachments—ready to affront with courage the proscription of a court—and to bear with patience the revilings of the multitude. It is the interest of a country when there are many roads to wealth, and many sources of tranquil enjoyment—that the 'great art of government,' as it has been called, should have its attractions for those who seek not their fortune in the emoluments of office, or their amusement in the exciting variety of political intrigue. The men who are qualified by talent, prepared by education, and fitted by integrity for the highest posts in Parliament and in Council, ought to be encouraged by high example, and inflamed by that love of fame

> 'Which the clear spirit doth raise,
> To scorn delights, and live laborious days.'

But this cannot happen, unless it is clearly shown that high desert has high fortune attached to it; and that the vulgar depreciation of political pursuits cannot soil the pure mirror by which true statesmen are tested in the opinion of after ages. It was by such a consciousness that Dante describes himself to have been sustained, when he represents the spirit as bidding him despise the low calumnies of his enemies—

> 'Perchè s'infutura la tua vita
> Vie piu che'l portar delle lor injurie.'

It is for the purpose of enabling our readers to reflect for themselves on the characters and career of the two leaders of the Reform Ministry, and to retrace the measures by which that Ministry sought to purify the Constitution, and improve our

Laws, that we now ask them to accompany us. Our sketch must be a mere outline, for the period of biography has not yet arrived; and we are far from wishing to anticipate it.

It is now sixty years since Charles Grey entered Parliament. His first speech was greatly admired. The fire and correctness of his language, the force of his argument, the grace of his delivery, assured the House of Commons that a new champion of Whig principles had arisen, whose voice would often be heard in the battle of debate. The course he took upon the Commercial Treaty with France, was prompted by the distrust of that power which, at that time, animated Mr Fox. We must in candour admit and lament, that those maxims of policy taught by Dr Adam Smith, which bind nations together by the reciprocal benefits of commerce, produced less effect on the minds of the Whig leaders than on that of Mr Pitt.

The great question, however, which was to shake England and disturb the world, did not arise till some years later. The French Revolution baffled the wisdom of the wise, and overcame the strength of the powerful. It is curious to observe the predictions of our greatest statesmen. Mr Fox declared that the French had raised an edifice of freedom unequalled in any age or country. Mr Burke, speaking of France, in February 1790, said, 'That France had hitherto been our first object in all considerations concerning the balance of power. That France is at this time, in a political light, to be considered as expunged out of the system of Europe. Whether she could ever appear in it again as a leading power, was not easy to determine; but at present he considered France as not politically existing; and, most assuredly, it would take up much time to restore her to her former active existence—*Gallos quoque in bellis floruisse audivimus*, might possibly be the language of the rising generation.'* Mr Pitt, in 1792, spoke of peace for many years as the probable condition of England, and founded his financial calculations on that supposition.

Alas! for the predictions of statesmen! The glorious edifice of freedom became, in two years, the most bloody tyranny of wild and cruel despots that the world had ever seen. The Gauls, whose military glory had departed, won victories without number, and planted their standards from Madrid to Moscow, under the conduct of the greatest Captain of modern times. The durable peace which was to bless the world, gave place to the most

* Burke's Works, Vol. iii. 4to.

destructive contest in which Europe had ever been engaged; and England was placed by Mr Pitt the foremost in that fierce conflict.

The mistakes of Mr Fox and Mr Burke led to no serious consequences. But the neglect and want of foresight of Mr Pitt, were the fatal forerunners of the war which ensued. When the monarchs of the Continent meditated the conquest, and even actually effected the invasion of France, Mr Pitt and his colleagues looked quietly on, and saw, in the want of energy among the Allies, a reason for confidence and apathy.* But when the French had shaken off their invaders, and the combat was actually engaged between the friends of old institutions and the founders of the new democracy, who can wonder that the furious government of clubs and mobs should push their victory beyond the ancient frontiers, and propagate by arms the doctrine which arms had been used to overthrow? Had Mr Pitt calculated on the unity, fervour, and military qualities of the French people; had he profited by the observation of Machiavel, that a people in the midst of internal dissensions gather, from the energy the contest inspires, the force to repel an invader; had he weighed the perils of an outburst of the French volcano upon the peaceful and enervated people of ancient Europe, he never would have allowed the invasion of the Duke of Brunswick. Had he threatened Austria and Prussia with the armed intervention of England, those powers would never have ventured upon the attempted conquest of France.

That precious time was lost. Mr Pitt seems to have been infected, notwithstanding his own experience of 1788, with the fallacious theory, that England can behold unmoved the disorders and hostilities of the Continental powers. When, however, the phantom of French aggrandizement rose before his eyes; when treaties were violated, and Holland was threatened with the fate of Belgium—it was impossible to take any part free from peril. Mr Pitt could not shake hands with the blood-stained anarchy of Paris. He could not, with his views, insist on the restoration of the Bourbons, and their absolute monarchy. He rushed into war, because he did not know how any longer to remain at peace. He rushed into war without a plan or an object: the powerful Minister of a great country resolved to fight bravely, but ignorant of his danger, and lost in the darkness of that mighty tempest.

Mr Burke was indignant because the English Ministry would

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* See a Letter of Mr Dundas in Burke's Correspondence.

not at once take up the cause of the Bourbons, and fight for monarchy.

Mr Fox, and with him Mr Grey, took a different view. They thought, that even after the fraternizing decree of November, and the opening of the Scheldt, it was still possible to accept explanations from France, and maintain peace. Mr Fox, whose abilities for the management of foreign affairs were unequalled, might probably have been able to accomplish so difficult an object. Mr Pitt did not attempt it; he divided the Opposition, and nearly ruined his country.

Mr Grey, in the midst of the alarm which inspired the higher and middle classes, adopted a bold project, and unfolded it in a manly tone. He proposed that the House of Commons should be reformed. He thought, and justly, that when the constitution was purified and reformed, the people would rally round it with such truth, zeal, and affection, that no fear of contagion from French principles need be entertained. In 1793, and again in 1797, he proposed in the House of Commons a plan of Parliamentary Reform. It was rejected. The Parliament which refused to reform the abuses in its own body, pressed upon the people with the weight of an awful senate; the safeguards of personal liberty were suspended; the Crown was authorized to detain the subject in prison without proof of crime; the Press was curbed; public meetings were prevented; the laws against sedition were made more and more stringent. Predictions of French ruin were falsified; English credit was shaken; the paper money of the banks received a legal sanction; the public debt was enormously increased.

This was a period to try men's souls. The cry of the landed and the mercantile and the funded interests was in favour of the Minister. The Whig party itself was broken and separated, by the discordance between Mr Fox and Mr Burke. The minority in the House of Commons was small in number. The opponents of the war were stigmatized as the favourers of a foreign enemy; the friends of the laws and liberties of England were denounced as the apostles of French Jacobinism. The crimes of Marat and Robespierre, the worship of the Goddess of Reason, and the progress of massacre in Paris, swelled the tide of public indignation, and exposed the advocates of peace to be swept away in the torrent.

But Mr Fox did not quail, and Mr Grey stood by him to encounter the storm. Mr Burke has borne his testimony to the abilities of the Opposition. Their courage was equal to their abilities. The speeches made in those days in Parliament, and in Courts of Justice, were acts of heroism. At length Mr Fox grew dispirited by the hopelessness of the struggle; and, retiring

to St Anne's, expressed his delight at the exchange of the turmoil of political debate for literary ease, and the leisure of his beautiful gardens.

The second revolutionary war was not marked by the same features. Napoleon had given order and despotism to France. The Whig party had not only regained Lord Spencer, Lord Fitzwilliam, and Mr Windham, but had acquired the alliance of Lord Grenville,—more than an equivalent for the loss of the Duke of Portland.

In 1806 the Whig leaders, upon the death of Mr Pitt, came into power. Mr Grey was First Lord of the Admiralty. After the death of Mr Fox, he became Secretary of State for Foreign Affairs. The ministry failed in their attempt to make peace; their military and naval expeditions were unsuccessful; but they completely and finally abolished the slave-trade. Nor was their end inglorious. While they were willing to waive any immediate attempt to better the condition of the Roman Catholics, they refused to give a pledge not to offer advice to the King upon that subject, should their duty to the state require it. George III., who had obtained such a pledge from Mr Pitt, instantly took measures for replacing them by the remnant of the Tory administration. The cry of No Popery was raised by Mr Perceval, and with great success. A fanatical clamour called for the proscription of those statesmen who could harbour a wish for the removal of Roman Catholic disabilities. The general election of 1807 ended in the complete discomfiture of the Whig party.

During the following years, power was more than once within reach of Lord Grey. But he never saw within his reach the means of carrying those measures of relief to the Roman Catholics of Ireland, by which that large portion of our countrymen might be placed on an equality with their Protestant brethren; and he steadily refused the bondage without the glory of office.

There is something striking in the sight of the leader of that party in the state which was most attached to popular freedom, excluded from power till he was nearly seventy years of age by popular opinion. He who had fought unsuccessfully by the side of Mr Fox for peace abroad, fought as vainly during a long period for union at home. The principles of freedom and of justice were obnoxious, but they were not less dear to Lord Grey. In his breast was kept alive that flame which, to all outward sight, was extinguished. Ever warm in the denunciation of oppression, Lord Grey urged on a reluctant House of Lords the just claims of Ireland. He was content to relinquish power;

he would not seek popularity; a reformer, when the people were averse to reform; a friend of religious liberty, when that liberty was assailed by bad laws and bad men. He stood erect, like a noble column of an ancient temple, firm on its base, and rearing its capital in the sky, after the altar had been buried in the dust, and the worship of the goddess had been forgotten.

The proposal made to Lord Grey in 1812 by Lord Moira, was rejected, upon that nobleman's insisting that members of the Household having seats in parliament, should not lose their offices. This question was entirely different from that which arose in 1839, when Sir Robert Peel required that ladies of the Queen's Household, connected by marriage with his political opponents, should be dismissed. Lord Grey himself, who thus acted in 1812, approved of Lord Melbourne's conduct in 1839; and, with Lord Spencer, attended in the House of Lords on a day when it was stated that Lord Melbourne's resumption of office would be attacked, for the purpose of declaring their entire concurrence with the ministry in the course they had pursued.

In 1810 Lord Grey made a speech on the state of the nation, in which he declared his opinions in the most solemn manner on the great questions of Ireland and Reform. We have already stated his opinion upon Ireland; but we cannot refuse ourselves the pleasure of quoting at large his sentiments upon Reform, delivered to an adverse audience in an inauspicious time:—

'I have hitherto spoke of financial reform, and the reduction of needless offices: in my judgment, your Lordships' duty does not stop here. You are, my Lords, in a situation wherein it is incumbent upon us to look into these defects, which, having arisen through time, have injured the frame and corrupted the practice of our constitution, and to apply to the abuse such remedy as can be effected by a gradual, temperate, and judicious reform, suited to the nature of the evil, the character of government, and the principles of the constitution. I would not have ventured to make this avowal to your Lordships, without much previous thought, and the most deliberate circumspection. The question of reform has long engaged my most serious contemplation. At an early period of my life, I certainly took up strong opinions on this subject, and pursued them with all that eager hope and sanguine expectation, so natural to the ardour of youth. I will not say that there may not have arisen some difference between my present sentiments and former impressions; still I beg leave to assure your Lordships, that the general opinions I have formed, I have not in my maturer age seen cause to change, and that, whatever distinction exists between my early and my present views of reform, on its great grounds that question has not been abandoned by me. That a degree of difference exists between my present and former impressions is what I

freely acknowledge; he, indeed, must have either been prematurely wise, or must have learnt little by experience, who, after a lapse of twenty years, can look upon a subject of this nature in all respects precisely in the same light. But though I am disposed soberly and cautiously to estimate the principles of the constitution—though, perhaps, I do not see in the same high colouring the extent of the evil sought to be redressed, and am more doubtful as to the strength and certainty of the remedy recommended to be applied; still, after as serious and dispassionate a consideration as I can give, to what I believe the most important question that can employ your Lordships' attention, it is my conscientious opinion, that much good would result from the adoption of the salutary principles of reform, gradually applied to the correction of those existing abuses to which the progress of time must have unavoidably given birth;—taking especial care that the measures of reform to be pursued should be marked out by the constitution itself, and in no case exceed its wholesome limits. With respect to any specific proposition of Reform of the other House of Parliament, I know not how to speak of it, fearful lest, even in introducing the topic, I should transgress the bounds of that respect due to an integral branch of the legislature; and most particularly as the propriety of any proposition of this nature must rest upon the acknowledged imperfections of the branch, together with the abuses which have rendered it less strong as a barrier for the people against the encroachments of power. But as nothing can be done on this subject without the concurrence of all the branches of the legislature, and as that which affects one branch concerns us all—as the question itself is of the highest importance to the nation at large—it is, my Lords, of particular consequence even to so humble an individual as myself, that my opinion on this subject should not be misrepresented. I therefore am ready to declare my determination to abide by the sentiments I have before expressed; and that I am now, as I was formerly, the advocate of a temperate, gradual, judicious correction of those defects which time has introduced, and of those abuses in the constitution of the other House of Parliament, which give most scandal to the public, at the same time that they furnish designing men with a pretext for inflaming the minds of the multitude, only to mislead them from their true interest. To such a system I am a decided friend—wherever it shall be brought forward, from me it shall receive an anxious and sincere support. But as I never have, so I never will rest my ideas of salutary reform on the grounds of theoretic perfection. While I shall ever be ready to correct, by the fixed principles of the constitution, an admitted inconvenience where that inconvenience is practically felt, I continue to disapprove of all those general and vague speculations in which some men would wish to engage.

'It was an objection formerly urged, and which has of late by certain persons been revived, against many of the best parts of our constitution, and particularly against the powers and privileges of the respective branches of the legislature, that they are not to be found enacted in any statute, or created by any written document; but what such persons

advance as an objection to the practice of the constitution, I have ever considered as one of its greatest perfections. To this conviction I have been led by all that I have learnt from the highest authorities,—authorities, alas! with whose presence and instruction we shall no more be enlightened; but whose talents, wisdom, and constitutional learning, we all acknowledge and revere. It is the folly and presumption of the present day to adopt a contrary doctrine—to decry every thing that is not defined by statute—to deny all authority to any usage growing out of the principles of the constitution, if it happens not to be expressly supported by written law. Nor is it now for the first time that such dangerous errors have been propagated in this country by mischievous or misguided men; similar objections were once before urged, though from other quarters, against the powers of Parliament, and led in their turn to the triumph of persons who were equally enemies of all powers and privileges, in whichever branch of the legislature they might be vested—persons whose objections are of a truly Radical nature, and go against the existence of all authority and control whatever, except that which their own hands have usurped. I need not remind your Lordships that these political heresies plunged the country into universal anarchy, and had wellnigh subjected it for ever to an arbitrary government. Happily, by its own inherent powers, the constitution recovered itself, and gradually established and assigned to its various branches rights peculiar to each, but necessary to the preservation of all, which, in the harmony and co-operation of all its powers, have been found to give the best practical effect to its principles, and to lead directly to that system of efficient government best adapted to the spirit and happiness of a free people. If, my Lords, any consideration more than another, could confirm me in the validity of this doctrine, it would be the concurrent opinion of that great statesman by whom it is the pride of my life to have been instructed and informed in the early part of my political career—I mean Mr Fox; whose views respecting Reform I had frequent opportunities of ascertaining in the course of many debates, and than whom there never existed one who more fully understood the principles, or more affectionately appreciated the blessings of the venerable constitution under which he lived. If, in his political creed, there was one article which he held more steadfastly than another, it was, that while a system was practically good, he would always abstain from mending it by theories. And never, my Lords, can I forget his powerful observations, when, in his place in Parliament, he stated his conviction of the absolute impossibility of providing for all the variety of human events by any previous speculative plans; for, said he, I think that if a number of the wisest, ablest, and most virtuous men that ever adorned and improved human life, were collected together, and seated round a table to devise *a priori* a constitution for a state, it is my persuasion that, notwithstanding all their ability and virtue, they would not succeed in adapting a system to the purposes required, but must necessarily leave it to be fitted by great alterations in the practice, and many deviations from the original design. And this opinion he was wont to illustrate by the familiar but apt ex-

ample of building a house, which, notwithstanding all the study and consideration previously bestowed upon the plan, was never yet known to supply every want, or to provide all the accommodations which, in the subsequent occupation of it, were found to be necessary. Nay, he used to remark, that however fine to look at a regular paper plan might be, no house was so commodious, or so habitable, as one that was built from time to time, piecemeal, and without any regular design. To those principles of practical reform, so wisely enforced by that great statesman, I am determined to adhere, and the acquiescence of your Lordships it is my duty also to solicit; again repeating, that the remedy I seek shall be limited by the existing defects—shall be marked by the constitution itself, and not launch out into any extravagance of theory, which even appearances may recommend.

'My Lords, this is no new opinion of mine; for if your Lordships will be pleased to lend your attention to any statement respecting so humble an individual as myself, I think it is in my power to prove to your satisfaction that none other was ever entertained by me. It is necessary that I should go so far back as the year 1792,—a period when such opinions were made the subject of more political heat and contention than at any subsequent time. At that period a society was formed to promote the cause of parliamentary reform, under the denomination of "Friends of the People," and of this society I had the honour to be a member. At that time the Friends of the People, both collectively and individually, were exposed to much misrepresentation. We were subjected then, as it is my fate now, to have our motives and our conduct made the objects of great and unmerited obloquy. We were then held up to obloquy by the same description of persons who now describe us as no sincere friends to reform, no real advocates for the rights of the people, because we were not prepared to support, what was then as it is now called, and most falsely called, a Radical reform. These charges were communicated to the world in two declarations, published by a society formed at the same time, for the purpose of promoting constitutional information. In consequence of these charges, and in answer to some letters addressed to us by individuals, one of which was from Major Cartwright, who took the same part then as he does now, and I believe, conscientiously, we felt it necessary to make a public declaration of the principles upon which we associated, and of the constitutional objects to which our exertions were directed. It was signed by my noble friend near me, (the Duke of Bedford,) then Lord John Russell, and, with your Lordships' permission, I will now proceed to read it.

'"May 12, 1792. We profess not to entertain a wish that the great plans of public benefit which Mr Paine has so powerfully recommended should be carried into effect; nor to amuse our fellow-citizens with the magnificent promise of obtaining for them the rights of the people in their full extent—the indefinite language of delusion, which, by opening unbounded prospects of political adventure, tends to destroy that public opinion which is the support of all true governments, and to excite a spirit of innovation, of which no wisdom can foresee the effect, no skill divert the course. We view man as he is, the creature of habit as well

as of reason. We think it therefore our bounden duty to propose no extreme changes, which, however specious in theory, can never be accomplished without violence to the settled opinions of mankind, nor attempted without endangering some of the most inestimable advantages we enjoy. We are convinced that the people bear a fixed attachment to the happy form of our government, and to the genuine principles of our constitution; these we cherish as the objects of such attention, not from any implicit reverence or habitual superstition, but as institutions best calculated to produce the happiness of man in civil society; and it is because we are convinced that abuses are undermining and corrupting them, that we have associated for the preservation of those principles. We wish to reform the constitution, because we wish to preserve it."

'These were my opinions in 1792; and I at this hour continue to maintain them.' *

The disasters of the French in Russia; the victories of Wellington in Spain; the revolt of Germany against the rule of Napoleon—at length procured for England a triumphant peace. But it was long before the opinions of the Whigs obtained the sanction of the country, whose passions had been roused to such heat by war and glory, that it was long before they cooled down to the temperature of rational government and peaceable reform.

At length the arguments of true statesmen made an impression. The views of Mr Horner on Currency, prevailed over those of Mr Vansittart. The narrow commercial policy of that Minister, yielded to the Free-Trade Petition of the city of London. The favour which Lord Castlereagh had exhibited to the despotisms of the Continent, was exchanged by Mr Canning for a more enlarged and English policy. Those supposed barriers of the Church, the Test and Corporation Acts, although defended by the ministry, fell before a majority of the House of Commons. The vigorous blows of Mr O'Connell struck down the iron gates which excluded the Roman Catholics from the inner temple of the constitution. The old Tory system tottered to its fall. The first touch of a newly elected parliament threw it to the ground.

Lord Grey had been twenty years in the House of Commons and twenty-three in the House of Lords. Mr Fox and Mr Burke, Mr Pitt and Mr Sheridan, were gone. Lord Grenville had totally retired from public affairs.

In this situation, men looked around them to scrutinize the character of the statesman of former days who came forward to preside over the councils of King William.

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* *Parl. Debates*, 1810.

Lord Grey was a man of lofty integrity, of unblemished honour, the object of affectionate attachment to his friends, of respect and admiration to all his countrymen. He had never swerved an instant from that line of public duty which appeared to him the most direct. Office accompanied by the desertion of a friend, or the abandonment of a principle, was in his eyes infamy. For years he had confronted obloquy, and defied an adverse court.

> 'Ille velut rupes magnum quæ prodit in æquor,
> Obvia ventorum furiis expostaque ponto,
> Vim cunctam atque iras perfert cœlique marisque,
> Ipsa immota manens.'

Yet Lord Grey was by no means obnoxious to the charge of being obstinate and unyielding. With colleagues and associates in whom he confided, no man was more ready to discuss, more patient to hear, more willing to modify previous impressions. When, however, the result of discussion had settled his opinion, then, after the fairest balance of opposite reasons, he would give a firm and clear decision. He never liked that wavering course, which, subtracting from one side all its vigour, and from the other all its caution, left a residuum which was vapid and tasteless. His perceptions were too clear to allow him to adopt what was vague or obscure; his heart was too upright to allow him to sanction what was mean or dastardly. He could not stoop to flatter a Prince; he could not play tricks to please a rabble.

His public speaking reflected the character of the man. Openness and candour had been the characteristic virtues of Mr Fox, and his great disciple resembled him in the possession of those qualities. He spoke neither with the impetuous energy of Mr Fox, nor with the declamatory splendour of Mr Pitt. His language was admirably adapted to convey his meaning, neither sinking too near the ground, nor rising out of sight—clear, genuine, unadulterated English. His arguments were forcible, arranged naturally, but still methodically; and there was visible through his transparent diction, a firm substantial public morality, and an honest attachment to the constitution of his country. A question of parliamentary right, or legal liberty, was peculiarly adapted to the exercise of his talents. Accordingly, the speech he made on Lord Sidmouth's circular respecting Libels, may bear comparison, in point of matter and lucid order, with the great speech of Mr Fox on the Westminster scrutiny.

Although no one could see Lord Grey without marking in him a certain dignity of bearing, and high-bred courtesy of manner, his ordinary life was entirely without formality or pomp. In his country-house he might be found in the morning, riding or walking with his daughters, or cutting down his young trees

in his plantations; and in the evening, conversing or reading with his family around him, never so happy as when political cares were thrown aside for amusements, or rational discussion.

Lord Althorp, who now became Chancellor of the Exchequer, and leader of the House of Commons, was eighteen years younger than Lord Grey. His father, Lord Spencer, had joined Mr Pitt in the first revolutionary war, and held office under him. In returning to his old connexions, he had retained several of those opinions of Mr Burke which first led to the schism. Accordingly, Lord Althorp when he first sate in the House of Commons, was not friendly to Parliamentary Reform. He worked out his free principles by constant observation and reflection, in the practical school of parliamentary life. His diligence was indefatigable, his sagacity quick, his judgment seldom at fault. Or, if ever he fell into a mistake, it was from too unsuspicious a confidence in the virtue of mankind—the error of a trusting, believing, hoping nature. He had improved his understanding by extensive reading, and was accustomed to work out by reflection all the great problems of moral and political philosophy; so that his mind was easily brought to act upon any subject which events placed before it. His views were large and comprehensive, embracing the whole compass of improvement in our laws, our commerce, and our constitution. But, above all, his opinions upon questions both speculative and practical, were guided by a humble reliance on the Goodness of God; and a conviction that he was bound in whatever he might think or do,—whether in following or resisting his own inclination,—to follow the Law of Christ. The state of public affairs led him to take an active part in the House of Commons; and although no one was ever so free from the pharisaical profession of purity, yet the simplicity of his character soon made him understood, beloved, and trusted beyond any man in that assembly. This was the more remarkable, as his tongue was far from eloquent; and, although his arguments were sound and comprehensive, he was so often wanting in words as to be obscure, and unable to convey adequately his meaning. But the confidence of his friends, his party, and the country, supplied all deficiencies, and gave to his few and simple expressions, as much influence over his audience as had ever been obtained by the most admired eloquence of our greatest orators.

He was plain in manner and in dress, but a short intercourse disclosed the scholar, the gentleman, and the statesman. For he possessed, with the entire absence of all artificial politeness, the most genuine courtesy of behaviour to all who approached him. His kindness of heart shone in the most casual, as in the most cordial intercourse; and while the intimacy of his friend-

ship was a treasure reserved for few, the equanimity of his temper and the charity of his judgments extended to all who approached him in the conduct of affairs, or were opposed to him in political enmity. He had no jealousy, no envy, and perhaps too little ambition. He often said, that he had hoped the many votes he had given in favour of motions which were supported by small minorities, would have prevented any proposal to him to accept office. But when he was told by Lord Grey, that the formation of the ministry depended upon his decision, he felt that he could no longer hesitate.

Let us now observe the situation of affairs when Lord Grey became Prime Minister. During a period of sixty years, the Tory party had held the leading offices of the state. During that time they had increased the public debt from one hundred and sixty, to eight hundred millions;—that is to say, they had added about twenty-four millions sterling to the permanent taxes of the country. They had lost thirteen colonies in America. They had inflicted an immense injury on the country, by substituting a debased currency in the place of sterling money; and the restoration of a metallic circulation, when it was at length restored, had been attended by sufferings of the most severe nature. They had converted the laws for the relief of the poor into a machine for depressing the labourer, and preventing the rise of his wages. On the other hand, they had added many new colonies to the Empire. They had directed the sea and land forces when the victories of St Vincent and Camperdown, of the Nile and Trafalgar, of Salamanca, Vittoria, and Waterloo, had been recorded in the annals of a nation already glorious for its ancient renown.

The moment at which the Tory leaders resigned office was one of difficulty and dismay. The constant refusal of any, the slightest reform in the representation, and the declaration of the more than human perfection of the existing system, had roused the fury of a patient people. The indignation of the metropolis was such, that the King, who had just ascended the throne, was advised not to risk the public tranquillity, by entering the city according to custom in procession. The labouring classes in the southern and western counties, driven to despair by the inadequacy of their wages, had risen in tumult, and had burnt or broken to pieces the thrashing machines, and other property of the farmers. In some places, the magistrates had yielded to their demands of an increase of wages; in others, the yeomanry cavalry had put down the rising by force. The example of a successful insurrection in Paris augmented the public ferment; inspired the lovers of revolution with wild hopes; and deepened

the gloom of the sober part of the community. Other dangers arose on the Continent from the same memorable event. Belgium shook off the yoke of Holland, Italy was in motion, and, while a great part of the French people aspired to regain by war the limits of the Rhine and the Alps, the Emperor of Russia refused to acknowledge the chosen King of the French, and Germany was agitated with rumours of the renewal of those wars, from whose bleeding wounds she had yet scarcely recovered.

Earl Grey was not a man likely to be intimidated by the forbidding aspect of affairs. His policy was summed up in a few words—'Peace, Reform, Retrenchment:' such were in his view the objects to be attained by a wise government; such, it may be added, were the ends to which the majority of the nation shaped their desires.

It has been absurdly supposed, and widely repeated, that, in seeking for peace, Lord Grey meant to preserve that blessing by what is called non-interference, or non-intervention;—that is to say, by totally abstaining from interference with the affairs of other countries. Lord Grey had been too long a friend and follower of Mr Fox to countenance so senseless a doctrine. We are convinced, as that great statesman had over and again taught, that it is only by a vigilant attention to the affairs of the Continent that this nation can hope to secure the continuance of peace: That as it is the interest of Great Britain to maintain the independence of the various states of Europe, connexion and alliance are the necessary means to such an end: That the internal government of those states is frequently connected with their external relations: That the independence of a country, or, in other words, its existence as a separate state, may be wounded as mortally by the support of its internal factions as by an attack on its external frontier: That if it be lawful for one power to interfere for the sake of establishing a foreign supremacy, it is lawful for another to interpose for the sake of strengthening a national government.

These doctrines, so often enforced by the greatest statesmen among us, had received cohesion and confirmation from the modern history of Europe. The Dutch Republic, in 1688, then at the head of the cause of European independence, had lent their forces to the Prince of Orange to bring about a revolution in England. Again, when the line of that prince and Queen Anne failed, they engaged by treaty to support the title of the House of Hanover against the legitimate heir; and actually sent over troops to suppress the rebellion which occurred on the accession of George the First. It would be laughable folly to assert that the Dutch placed King William, or supported King George on the throne of England, with a view to establish the

predominant influence of Holland in the affairs of England. They saw clearly that King James had been, and his grandson would be, the hired pensioner of France; that the cause of Europe required that the ambition of France should be resisted; and that the Balance of Power must be maintained by taking weight from the scale of French supremacy.

In 1786 the former case had been nearly reversed. England had become the guardian of European independence. France attempted to gain Holland by popular tumult and foreign intrigue. England and Prussia restored the Stadtholder, and put down the democratic party. Interference in this case was directed by Mr Pitt, and hailed with applause by Mr Fox.

Lastly, the neglect of these salutary maxims had involved England in the bloody and perilous war of 1793.

Enlightened by these examples and these warnings, Lord Grey, with the assistance of Lord Palmerston, undertook the task of preserving the peace of Europe. This course was full of perils; but by firmness and prudence they were overcome. A war party in France wished to appropriate Belgium; they were not gratified. The King of Holland attempted to bring the northern powers in arms to his support; he was disappointed. The part of England was bold, daring, just, pacific. Her cordial agreement with France checked the spirit of the Holy Alliance, which might otherwise have revived; her moderation, and the necessity of conciliating her, tempered the views of France, and restrained her warlike ambition. The Whig ministry were violently reproached with abandoning Holland, and clinging too closely to France. The answer is, that Holland was not abandoned; the union with Belgium, which had been begun in error, and which had never been cemented by affection, was dissolved, but full justice was done to the claims of Holland. Nor was the French alliance purchased by any dishonourable or impolitic concession. A friendly concert with France is at all times desirable for the interests of England, no less than for the peace of the world. Nor will it now be made matter of accusation, that the Whig ministry of 1830 maintained a cordial understanding with the King of the French.

The negotiations on the subject of Belgium lasted for several years, and required knowledge, temper, and address. The crown of Belgium was not disposed of without much discussion, and the rejection of many spurious projects. When that point was settled, the infant monarchy was nearly crushed in its cradle by the Prince of Orange; the interference of the British plenipotentiary and the near approach of the French troops averted the danger. The obstinacy of the King of Holland made it necessary to employ a fleet and an army to enforce the surrender

of Antwerp. But the peace of Europe was at length secured by treaty, and a wise Prince ascended the throne with the full assent of all the great powers.

The question of Reform occupied the mind of Lord Grey from the moment of his accession to office.

The dangers of the winter of 1830; the evident state of public opinion; the profound secresy which was observed; the chuckling of the Opposition leader at the prospect of the proposal of a trifling change—are fresh in the minds of many.

Nor will those who were present easily forget the scene which took place in the House of Commons, on the memorable first of March. The House was silent, curious, anxious, till the first elements of the plan were unfolded. Amazement succeeded. But when it was explained that fifty boroughs were to be disfranchised, and fifty more were to return one member only instead of two, the Opposition took courage. They could not believe that the intention was serious. They triumphed in the anticipation of certain victory. Laughter took the place of indignation; each subsequent announcement was greeted with derision. Many of the Whigs despaired of success; the Radicals rejoiced at the development of a plan so much in accordance with their own views. Parties were at fault. The great majority of each party was mistaken. The Tories were wrong in thinking that the plan could be easily rejected; the Whigs were premature in their forebodings of failure; the Radicals deceived themselves when they supposed that so large a ruin must lead to a more uniform construction. The authors of the plan were alone justified by the event.

This assertion requires explanation and proof. We must first examine what was intended; next, what was actually done; and lastly, what have been the consequences of the Reform Act.

At the period when the Reform Bill was brought forward, public opinion was excited and inflamed. The defence of the established system had been obstinate and protracted. Mr Canning in his pointed style had said, in the name of his party, 'in dis-'franchising Grampound, I mean to preserve Old Sarum.' Sir Robert Peel, on behalf of the ministry of the Duke of Wellington, had opposed the addition of Manchester, Leeds, and Birmingham to the list of boroughs sending members to Parliament. Thus the line of defence was complete and unbroken; it included the green mounds of Old Sarum, and excluded the great marts of manufactures.

So long as the people were not dissatisfied, the House of Commons were sure to approve of the Conservative feeling. But the reliance upon majorities within, had blinded the Tory leaders to the signs of a storm which was rising without. Lord Grey had

taken his observations with better skill; they led him to the following results:—In times of calm repose it is wise to make gradual, and even small alterations; they remove glaring defects, prevent incipient complaint, and prepare the way for further changes. But when great changes are called for by the spirit of the time, trifling repairs only irritate and provoke. They are willingly admitted, but not long acquiesced in. The appetite for change is excited, not satisfied. New demands must be complied with. At length the people cease to discriminate between useful improvement and heedless innovation; institutions are attacked, not because they are bad, but because they exist; change itself becomes a popular necessity, and the best safeguards of liberty are thrown into the same lumber-room with the most obsolete corruptions of power. Persons are in fashion no longer than their opinions; the most extreme are the most acceptable; Pym makes way for Vane, and Vergniaud takes the place of Mounier. Presently all is anarchy, or all is despotism; Cromwell or Napoleon crush liberty under the iron heel of military rule.

For such reasons, Lord Grey and the authors of the Reform Bill resolved that their measure should be large, in order that it should be final; and that it should be final, that the constitution might be preserved. But for the sake of preserving the constitution, it was necessary not only that the measure should be large, but that it should be in harmony with the essential parts of that constitution,—purified and restored indeed, but manfully upheld. An Established Protestant Church; a House of Lords deriving from the crown; an hereditary sovereignty; a responsible but powerful Executive,—such were some of the main pillars of the constitution. An assembly chosen by universal suffrage, annually elected, would have sorted ill with the *purpurei panni* of the old tapestry.

Nor was it to be forgotten that Mr Canning, in his eloquent speech of 1821, had forcibly put this objection. Referring to the speech of Mr Fox in 1797, he had contended that the House of Lords could only flourish by the side of an unreformed House of Commons.

In considering the construction of the House of Commons, it was observed, upon analysis, to consist of some parts which ought to be retained, but in a better shape, and of others which ought to be entirely cut away. Thus it was desirable to retain the fair influence of property in land; but not to allow it to exist in the shape of hovels, as at Gatton or St Mawes, or of exclusive corporations, as at Bath or Scarborough. Thus, likewise, it was desirable to see in the House of Commons commercial and manufacturing capital and intelligence fairly represented; but not

to have it introduced, as at Grampound or Portarlington, by the sale of seats to the highest bidder. On the other hand, the mass of political adventurers, introduced into the market of eloquence to speak for hire, and sell their abilities for salary, might with great advantage to the public be retrenched.

Proceeding on these views, one hundred and fifty seats in the House of Commons were abolished. They were all taken from the smaller boroughs. Those which remained were thrown open, if hitherto close, to all householders whose houses, shops, warehouses, or offices were of the value of ten pounds a-year. The qualification for voting in the scot and lot, or potwalloping boroughs, was raised to that sum.

The seats thus obtained were distributed with regard to the altered circumstances of the country. The representation of England was reduced from five hundred and thirteen to five hundred. Eight additional seats were given to Scotland, and five to Ireland, whose representation had been more recently fixed. Upwards of sixty were allotted to the English and Welsh counties. Manchester, Leeds, Birmingham, Sheffield, Halifax, Rochdale, Stoke-upon-Trent, Stroud, the metropolitan districts of the Tower Hamlets, Finsbury, Marylebone, and Lambeth; other populous towns, the seats of manufacture, or the centres of accumulated property, were now, for the first time, admitted into the representation. The opposition made to a reduction in the numbers of the House of Commons in no way affected the extent of disfranchisement, but added to the number of counties and towns which sent members for the first time, or in augmented number.

No one who surveys this scheme impartially, can fail to see, that while a great blow was struck at the old system of close boroughs,—having no character of popular choice in their size or constitution,—the property of the country, considered as a whole, obtained more than an equivalent.

It has been said that the declared intention was to make the Reform Bill a final measure. Such was the repeated avowal of Lord Grey, Lord Althorp, and Lord John Russell; such was the promise, on the faith of which many doubtful or apprehensive persons gave their support to the ministry. Of course, this declaration was to be understood with two conditions. The one, that amendments declared necessary by the abuse of the powers conferred in the Act, or from the obscurity of its provisions, or from the increased fitness of a large class of persons, should from time to time be introduced. The other, that the general satisfaction which it was the object of the bill to procure should follow its adoption. Not of course the satisfaction of the whole community, is here meant, but general acquiescence, and a prevailing indisposition to further change.

It has been already shown, that had the plan been of the moderate or trifling kind which many persons would have preferred, the question would not have been settled, and perpetual agitation must have ensued. The same evil would have been incurred had the plan been more destructive in its disfranchisement, and more democratic in its constructive clauses. The noble and the wealthy classes, rooted in the soil by prescription, and extending their branches widely by the influence of property, would have resented and resisted any scheme by which numbers alone should govern this great Empire. Or, if defeated by the force of popular enthusiasm, they should be compelled to yield to the storm, they would have taken advantage of a calmer day, and excited the aristocratic powers of combination to overthrow the fragile fabric, and scatter its unsettled foundations.

But when the landed proprietors found, that by registering voters they could make their weight be felt in the new legislature; when the merchants and manufacturers discovered, that the new men had their place amongst the highest in the senate—it was seen, that though the rotten planks were removed, and the rudder had been strengthened, the lines of the constitution had not been altered, nor stability sacrificed to buoyancy and speed. The most powerful of the Tory nobles, the most jealous *laudatores temporis acti*, began to survey their new abode; to study its advantages; to accustom themselves to the broad lights and spacious passages of the modern building; and finally, to accommodate themselves to the restored habitation:—it was found that the bees could still make honey, and had even more room in the new Hive than in the old—

> 'Ergo ipsas quamvis angusti terminus ævi
> Excipiat (neque enim plus *septima* ducitur ætas.)
> At genus immortale manet, multosque per annos,
> Stat fortuna domus, et avi numerantur avorum.'

It is obvious, that while the authors of the Reform Act were governed by these considerations, they must have viewed with scorn the imputations so harshly cast upon them, that they sought to secure the permanent predominance of their own party. They must have foreseen, that a plan of representation which gave great power to property, and maintained the landed interest on a high, though somewhat lowered eminence, would give the Tory party, compact and strong as that party was, as good a prospect of governing the country as any other. In fact, the French Revolution had thrown into that party many of the oldest Whig families; and the government of Mr Pitt had brought to their aid a great portion of the mercantile community. It was impossible, without wrenching power from its natural position, to exclude such a party from the prospect of regaining the government. But as the authors of the Reform Bill never contemplated such a dislocation, so likewise they never sought for,

or expected such a result. Their followers might indeed imagine that a party which had become so unpopular by its resistance to reform, would not soon rise again. But the framers of the Reform Bill had calculated on the variations in the popular compass, and were not surprised at the change which occurred.

Lord Grey had promised Retrenchment. We take from a pamphlet, entitled *The Reformed Ministry and the Reformed Parliament*, published in 1833, the following statement:—

'One of the earliest acts of Earl Grey's government was to reduce their own salaries, those of all the great officers of state, and others whose salaries exceeded L.1000 per annum. In two years, viz. 1831 and 1832, not less than 1265 offices, with salaries amounting to L.220,000, were abolished, in the different establishments of the government. In the customs alone, 414 offices were reduced, and a saving of L.29,000 per annum, effected. In the excise 507 were reduced, and an annual saving of L.145,250 effected. Similar reductions were made in the diplomatic and consular departments. At Malta, Gibraltar, Cape of Good Hope, New South Wales, Van Dieman's Land, &c., a saving of L.134,000, out of a charge of L.411,000, will be the consequence of the reductions made. In Canada, Nova Scotia, New Brunswick, Trinidad, British Guiana, &c., similar reductions have been made.

'The total saving in the government established in the colonies will be L.224,000, out of a charge of L.573,000. The following table shows the reductions:—

	Emoluments in 1829.	Emoluments in 1833.	Saving.
Treasury,	£20,900	£14,800	£6100
Home, Foreign, and Colonial Departments,	52,828	36,100	16,728
Admiralty,	19,940	7500	12,440
Army,	17,876	8455	9421
King's Household, &c.	11,286	2000	9286
Customs,	64,520	18,400	46,120
Excise,	14,300	7200	7100
Judges and Courts of Law,	52,492	38,000	14,492
Ireland,	49,903	32,989	16,914
Colonial Agents, &c.	5895	1800	4095
Miscellaneous,	6298	.....	6298
DIPLOMATIC AND CONSULAR OFFICES.			
Ambassadors,	55,300	45,900	9400
Envoys Extraordinary, and Ministers Plenipotentiary,	50,800	38,800	11,400
Ministers resident abroad,	14,200	10,750	3450
Secretaries,	15,000	11,375	3625
Consuls, &c.	44,450	21,800	22,650
General Total,	494,898	295,469	199,429

The great reductions in our naval and military force made it possible to diminish the burden of taxation—

'When the ministry came into office in 1830, they found the revenue of the country amounting to L.50,056,616; of which sum about L.35,000,000 was required for the payment of the debt, civil list, and other fixed charges. The estimated excess of income over expenditure was that year L.700,000; but, between that period and the present, Lord Althorp has repealed the duty on coals, amounting to L.900,000; on candles, to L.500,000; on soap, to L.600,000; on printed cottons, L.550,000; assessed taxes and farming stock, to L.440,000; on marine insurances, to L.100,000; on slates, tiles; on advertisements; on tax-carts; small receipt stamps; on travellers, clerks, book-keepers, office-men, &c.; making a total of L.3,335,000. These taxes were repealed in 1832 and 1833.

'The same ministry, in 1834, repealed the house-tax, L.1,200,000; the window tax on farm-houses; on husbandry horses, used occasionally for riding or drawing; on shepherds' dogs; on post horses, used occasionally in husbandry; on starch, L.75,000; and on almanacks; making, with the house-tax, a total of L.1,581,000 repealed in 1834.

'In addition, the annual payment of the interest on the West India compensation, viz. L.750,000 has been provided for; so that the total reduction in the years 1832, 1833, and 1834, with this payment, amounts to no less than L.5,700,000.

'Every effort has been made to remove unnecessary and injurious shackles upon trade, either by reducing taxes which pressed on industry, or removing vexatious regulations or exclusive privileges. With this view, the tax upon printed cottons, amounting to L.2,000,000 gross, and L.600,000 net, was repealed. The cotton-tax, which was substituted for about half this amount in 1831—repealed in 1833. The duties upon upwards of 400 articles used in manufacture, of more or less importance, many of them very considerable—either materially reduced or altogether repealed; reductions amounting to not less than L.400,000. The package and scavage dues, amounting to L.16,000 a-year, have been abolished; and the port dues of the City of London reduced to less than one half. The Custom-house laws have been consolidated, and made simple and easy of access.

The discussions regarding Ireland which occurred when the new Parliament met, we reserve for the conclusion of our remarks. One of the first questions to which the Reform Ministry turned their attention, was the mode in which slavery in the West Indian colonies should be treated.

There could be no doubt among liberal and enlightened men on the abstract vices of slavery. Whatever may be the evils of despotism in government, they are as a grain of sand compared to the enormous grievance of personal slavery. The spirit of the Christian religion, the laws of humanity, the rules of sound policy, alike forbid that man should be the chattel property

of man—his to *force* to labour—his to corrupt—his to torture—his to kill.

Indeed, so repugnant is this institution to human nature, that it requires the most violent means to preserve it. Horses grow fond of their stable, and exult in bearing their master to the chase or the charge; dogs feed from their masters' hands, and watch with untiring affection over their masters' lives. But man, turning to him 'who made us of such large discourse, looking 'before and after,' cannot easily and willingly lend 'such 'capability and godlike reason' to the uses of bondage. His mind revolts at toil enforced by the whip for the benefit of another; his affections are outraged by the licentious violence which robs him of the bride of his bosom; his spirit looks upward to God, and prays for deliverance from the unholy compact.

It is therefore necessary, in order to maintain slavery, to degrade, as far as possible, the human nature to the brute. With this view idleness or disobedience must be followed by instant chastisement; religious or intellectual instruction must be debarred; indulgence must be given in the shape of childish amusement or physical pleasure, without any mixture of sweet companionship or moral elevation.

Such was slavery in the British West Indies during the last century. Such was the system which the government of England, of all parties, encouraged by public opinion, fostered, promoted, and upheld. After the abolition of the slave trade by the Whig ministry of 1806, the philanthropists who had raised their batteries against that iniquitous traffic had employed the same artillery against slavery itself. The government, imbued with the Tory maxim—of leaving ill alone, had seen this movement with displeasure. Their opponents, with the remarkable exception of Mr Brougham, had not been forward to incur the responsibility of the mighty change contemplated by the society for the abolition of slavery. Still opinion grew more and more resolute against the system. It was thought necessary to do something. The Ministry put in force a code of regulations, mitigating in appearance the evil denounced; forbidding the flogging of women, allowing certain markets for the slaves to dispose of their produce; enforcing fixed allowances of food and clothing.

Experience soon showed that these regulations were founded on wrong principles. In fact, the ground between slavery and freedom is a shifting quicksand. In slavery, the human animal has a chance of being as humanely treated as the other cattle on the owner's estate. If he is obedient, docile, industrious, he may thrive and grow fat as well as the ox and the ass, and every

thing that is his. An intelligent, kind-hearted master, an honest and good-tempered overseer, may effect much in the way of mitigation by discretion. But mitigation by law is another thing. The slave learns that his master's master has interfered in his behalf. He inquires from his friends what are the securities he has obtained. He seeks to put in force his new and unaccustomed rights. But the master examines, with no less attention, and with more sagacity, the negro code. He knows that Parliament intended labour to be still compulsory, and he ascertains the means by which it is to be enforced. The negro and the planter, from bondsman and master, become plaintiff and defendant. The negro finds he has many ways of counteracting his master; the master finds he has many more ways of defeating the negro. Complaints multiply; punishments increase in proportion; the amount of work diminishes; the indulgence of the planter is at an end. Inspection, arbitration, courts of justice, only aggravate the discord which prevails; slavery is still the law, and compulsory labour the recognised obligation; the sanctioned mitigations are evaded or despised; the negro people become more and more exasperated, and are viewed with increased suspicion. Toil beyond human endurance, punishments exceeding human justice, are rigorously enforced; population rapidly diminishes, and the planter, turned tyrant, surveys, with dismay, his blood-stained produce and his perishing people.

Thus it happened in Demerara. The whole number of slaves, on estates wholly or partially cultivated in sugar, was, in 1829, 47,456. In three years, to May 1832, the deaths were 5573; and the total diminution of numbers 2745, or 5½ per cent.* On some estates the mortality was larger. The increase of sugar from 1826-9 to 1829-32, was from 662,000 cwt. to 806,000 cwt. In 1829, when the slave population was 61,627, the number of punishments was 17,359; in 1831, the slave population being 98,000, the number of punishments was 21,656.

In Jamaica, where the Orders in Council had not operated, the difference in the increase of sugar, from 1823-6 to 1826-9, was only from 1,354,000 cwt. to 1,389,000 cwt., and the decrease of population was only from 334,000 to 327,000.†

Still the change proposed was of an awful nature. Statesmen, entrusted with the destinies of their fellow-subjects of all ranks and conditions, could not leap to the dogma of the religious societies, that slavery must be abolished without qualification, and the consequences left to chance. Anarchy, rebellion, and mur-

* Lord Howick's Speech, May 14, 1833.

† Lord Stanley's Speech, May 14, 1833.

der, were, in their eyes, evils of no less enormity than slavery itself. A safe way out of the labyrinth might be found; to fire the building for the sake of escape, would be the stratagem of desperate men, but not of a wise government.

Inquiry was the first step that was adopted. Committees of both Houses were appointed, and members of the Cabinet placed upon each. The evidence before these committees was at once appalling and satisfactory. The evils of slavery were fully proved. But it was likewise shown that many of the blacks had acquired, under benevolent masters, very considerable property; that migratory gangs worked for wages with great benefit to their employers and themselves; that Baptist and other Missionaries had taught the most intelligent among them the privileges of the Christian faith, and the duties of free subjects. In short, it was proved, to the conviction of the Cabinet, that the experiment of emancipation did not involve either political anarchy or social annihilation.

It is not necessary, in this place, to discuss the particular merits of the plan brought forward by the government for the emancipation of the slaves. That plan was afterwards greatly modified. Instead of a loan of Fifteen Millions, to be repaid by the labour of the slaves, the magnificent sum of Twenty Millions was granted by the Commons of England, as their share of the loss to be incurred by emancipation: the period of twelve years was reduced to seven, and the seven were, in fact, no more than five.

Be the merits of the machinery what they may, no one can deny the boldness of conception by which this scheme was marked. No less than Eight Hundred Thousand human beings were, in a few years, to be raised from slavery to freedom; their children were all to be born free; a community of freemen was to be established in all the colonies of the British crown; and the vain boast of the American constitution, that all men are equal, was to become a reality for the subjects of the King of England. The nation, which had incurred eight hundred millions of debt for the sake of maintaining its independence, or its power by war, added twenty millions to that debt for the sake of humanity and conscience, in peace. Pressed by no insurrection, in no penury of resources, in no failure of military force, Great Britain declared herself ready for any sacrifice of wealth, or even any hazard of diminished Empire, in order to abolish all distinction of race or colour, and establish for ever the freedom of her negro subjects.

The Tory party looked on, cautiously and coldly, while this measure was making its way through Parliament. Lord Ellenborough denounced its introduction as hazardous and prema-

ture; had the West Indian interest thought itself equal to resistance, it was tolerably clear that factious aid would not have been wanting; when that interest accepted the Twenty Millions, the party reluctantly acquiesced in the emancipation of the blacks.

The discussions of this year exhibited in a strong light the debating ability of Lord Stanley. At the commencement of the session, he overpowered the Irish Repealers by his vehement invective; afterwards, he carried on at the same time the Church Temporalities Bill of Ireland, and the Slavery Abolition Bill, with unrivalled clearness of statement, readiness of reply, and facility of managing the details of complicated measures.

In the same year the Bank Charter was renewed. Lord Althorp maintained sound views on the subject of currency, in accordance with those of Mr Horner, Mr Huskisson, Lord Grenville, Lord Lansdowne, Mr Ricardo, and Sir Robert Peel. The details of the measure do not require any notice here.

The renewal of the Charter of the East India Company was the occasion of a greater change. The commercial character of that Company was extinguished. The trade to China was thrown open. The English merchant was free to carry on his commercial speculations with a nation of three hundred millions. The East India Company remained the Sovereign of India on terms which, after some negotiation, appear to have been considered on both sides equitable and just. Thus, this great change was accomplished among the minor achievements of the government of Lord Grey.

The prominent question for Parliamentary discussion in 1834, was the Bill for the Amendment of the Poor Laws.

It is obvious that a poor man, and a pauper, are in different stations of life. A day-labourer may be poor; but so long as he lives on his earnings, he does not differ, in the character of his employment, from the lawyer, the physician, or the tradesman, who receives his yearly income from the proceeds of his industry. The pauper has no such resource. In failure of all means of support, he applies to the community for sustenance—the community thus appealed to gives him work and maintenance if he is able to labour, maintenance alone if he is unable. Such was the principle of the Poor Law of Elizabeth. Founded on wise and benevolent views, it directed that the overseers of parishes should relieve the infirm and the young, who could earn little or nothing for themselves, and should set the able-bodied to work.

In an evil hour, this law was perverted to far different purposes. It was meant for the pauper—it was applied to the labourer. When, during the war, food became dear, it occurred

to some volunteer legislators, that if, instead of raising wages, the labourers received support for their families from the poor rates, the purpose of enabling the labouring-classes to live, would be attained at the smallest cost to the owners and occupiers of land. This plan received the approbation of Mr Pitt; and every obstacle which the law interposed to prevent the substitution of rates for wages was thrown down, to favour the progress of the scheme. The act of George the First, enabling the parishes to restrict relief of the able-bodied to the workhouse, was repealed. Magistrates laid down rules for the distribution of public funds, and published tables for the guidance of overseers, founded on the numbers of a labourer's family, and the price of the peck of flour.

By this system, society was placed in the greatest peril. According to the natural distribution of wages and labour, a young man earning the value of his work, is obliged to calculate, before he marries, whether those earnings will enable him to support a wife, and bring up a family of children, until those children are able to earn their own subsistence. This forethought marks him for a reasonable being, and keeps up in the community of labourers to which he belongs, that power of commanding adequate food, house-room, and raiment, which constitutes comfort in his own vast and important class. But when his wages are measured by the lowest amount of money on which he can live, and the provision for a married couple is made by the parish, all motive for provident forethought is taken away, and the temptation to early marriage, strong enough in itself, has no counterbalancing fear. Want cannot afflict the favourite of the law; no starving children will reproach him with exposing them to hunger and nakedness. The state offers a premium to all who marry. Thus, to quote a trite instance—two labourers were thrashing together in a barn, their day's work was the same, the value of their labour to their employer exactly the same; yet, one received only eight shillings for a week's work, the other received fifteen. The reason was, that one was single, the other married.

It is obvious that such a system must produce more labourers than could find profitable employment. This was in fact the case. Forty or fifty labourers were to be found in a parish, whom no employer wished to hire;—who lowered the general value of labour, the only commodity the poor man has to sell, and by absorbing a large sum in poor-rates, diminished the whole fund applicable to the commodity which the employer wishes to buy.

Such was the general and indirect evil. The collateral consequences were not less mischievous. The idle father of a large family, paid by the head for the number of his children, divided

the painful toil of the industrious peasant, who, with a less family, received four shillings a-week less than his dissolute, lazy neighbour. The employer, breaking off the old endearing connexion between the farmer and his men-servants, turned off his labourers in hard weather, to live upon parish allowance. Gangs of men, young and old, under a timid overseer, neglected the parish road they were put to mend, and, combining together in crowds, planned a scheme of poaching and drinking for the night. Theft and housebreaking succeeded to idleness and poaching; the law lost all authority, and if any active landowner, clergyman, or farmer, attempted to check this career, a benevolent magistrate was to be found at no great distance, who had no scruple in taxing his neighbours, to gain among the lazy and profligate the title of the poor man's friend.

Such was the evil with which the ministry of Lord Grey had to deal. Mr Canning and Sir Robert Peel had declined or evaded that which was at once the most difficult of invidious tasks, and the most imperative of patriotic duties. The evil had gathered strength by neglect; the riots of 1830 were but a slight symptom of the disorders which must overtake the country if that duty was much longer neglected.

The first step in this, as in other instances, was to inquire—the Bishops of London and Chester, Mr Sturges Bourne, Mr Senior, and other gentlemen, were established Commissioners of inquiry, in order to ascertain the chief defects in the administration of the poor-law, and the mode of amending them. The Poor-Law Amendment Bill was framed on their Report. The management of relief was confided to district boards, instead of parochial vestries; the principle of local representation was maintained, but some additional influence was given to the owners of land; the law of George the I., enabling the guardians to give relief in the workhouse, was restored; a central board of commissioners, appointed by the government, was entrusted with the power of framing general rules, and of watching over the local administration, without any authority to order relief in individual cases.

The first operation of this law was salutary. Farmers expended large additional sums in wages. The rates for the relief of the poor were reduced by the sum of two millions sterling; but it is probable that a larger sum than two millions was added to the expenditure for wages. Healthy, industrious labour for wages, took the place of idle, loitering, nominal work, paid by the parish officers under the name of relief.

The greatest question which lay before the Parliament and the people of Great Britain, after the passing of the Reform Bill,

still remains to be considered. Ireland had been from the period of the union a source of dispute and of weakness; a theme for eloquence in Parliament, a theatre of bloodshed in her valleys; a name of terror to fanatical Protestants; a reality of suffering to the peasant Catholics; a great Church Establishment for a fifth or a tenth of her people; large landed proprietors totally unacquainted with the condition of their tenants; laws for punishing the people, enacted by party violence, and administered by party insolence; famine, discontent, insecurity, deeds of atrocity, wrongs unredressed, justice distrusted, the demagogue powerful with the millions, the government relying on the bayonet—such were some of the features of Ireland from 1801 to 1829.

Let us shortly notice the history of Roman Catholic Emancipation, in order to understand the Irish difficulty with which Lord Grey had to deal. That measure had been proposed to George the Third by Mr Pitt when in office, and abandoned by him as soon as he had retired from power. It was proposed by Mr Fox in 1805; by Mr Grattan in subsequent years; by Mr Plunkett, by Sir Francis Burdett, and partially by Mr Canning. For about fifteen years it was an open question in the Cabinet. Mr Secretary Canning supported, Mr Secretary Peel opposed, the Roman Catholic claims.

After Mr Canning's death the same division existed in the cabinet. Distracted councils made a distracted country. At length Mr O'Connell procured himself to be elected member for the county of Clare;—assailed the English government and parliament in the most inflammatory language; and by means of a well-organized association brought Ireland to the verge of civil war. Then the Tory ministry relented. That which had been refused to petitions and supplications; to offers of a vote on the appointment of their Bishops; to the arguments of Mr Fox, the inspiration of Grattan, the eloquence of Plunkett;—that which twenty-three years of rational discussion, and the authority of the greatest of English statesmen had not obtained, was yielded to the array of embattled multitudes, and the threats of impending rebellion. Catholic Emancipation was granted; but the same want of foresight which had marked the resistance, accompanied the concession. The Roman Catholic Relief Act itself was the trophy and the triumph of popular agitation. Other questions were left unsettled; the Protestant Church was left to support itself by tithe and church cess levied upon the Roman Catholic majority. Nothing—for next to nothing—was done for Education; Roman Catholics obtained no practical boon, either in offices, diminution of burthens, or social improvement. It was as if a farmer in America had cleared his land of the trees

which shut out the sun and air, but had omitted to plough or to sow, and had looked for a harvest of plenty from the spontaneous bounty of heaven. The case was even worse than this. Popular agitation; monster meetings; violent speeches, had brought about a concession of legal equality. Why not try the same means to procure a redress of remaining grievances?

This obvious corollary followed the government proposition. The Irish were too quick in intellect, and too much elated by success, not to try the experiment of further menace. The collection of tithe was a tempting topic for an orator, a sore grievance for the people. The ragged peasant forced to pay his penny to a Church, which in his eyes was heretical and reprobate, was easily moved to oppose the exaction. Passive resistance was the signal. The conflict which had been carried on for equal rights had raged in public meetings, in assemblies of men convened for the purpose of denouncing an unjust law, and petitioning for redress. The tithe agitation raged in every farm and upon every field, in the depth of the valley, upon the top of the mountain. Whenever the tithe collector appeared, accompanied perhaps by a brigade of constables, perhaps by a troop of horse, the cattle were driven away; the peasantry were summoned by signal from hill to hill; loud execrations followed the ministers of the law, and bloodshed was often the result. A miserable peasantry, thus excited in their homes, and instigated by their leaders, could not restrain their passions within the channel which had been marked out for their resistance. Fearful assaults, atrocious murders, deadly conflicts, spread over the southern counties; the government was powerless for repression; and the agitators themselves in vain denounced the transition from sedition to bloodshed. Still the crime increased, and deeds of the most horrible atrocity were accompanied by a savage spirit of insult to the victims.

The government of Ireland, under Lord Anglesey, had been to the end of the year 1832, employed chiefly in two great measures. One of these was the Irish Reform Bill, by which the close boroughs of Ireland were opened; the right of election was extended from the sovereign and twelve, a common number even in the larger towns, to all householders of ten pound a-year, and an additional member was given to four of the great towns.

The other important measure adopted by the Irish government was the scheme for National Education. The Board composed of Protestants and Catholics, nearly as it now exists, was established. Under their auspices a system of instruction was adopted, of which the Roman Catholic children could partake, without

offence to their parents or their priests. Against this scheme was directed the cry of Bible mutilation. The Bishops in the House of Lords denounced it. But the foundation was laid for the mixed education of the people of Ireland, and the moral improvement of the rising generation.

Still, however useful these measures might be for the future, the Ministry which had carried the Reform Act found the tithe war making fearful progress, and the great problem of the government of Ireland still unsolved.

Whatever might be the measures best adapted for the permanent happiness of Ireland, it was necessary to encounter the pressing and predominant evil. Life was insecure. No enjoyment of political rights, no encouragement to peaceful industry, no removal of glaring inequalities, could succeed, while the subject could not feel secure in his field, on the road, in his bed. Lord Anglesey had conceived the largest schemes for the arrangement of the Protestant and Roman Catholic Churches, without injury to any living individual. He had drawn an outline of measures for the future improvement of the country. But he saw that it was necessary to put down the spirit of general sedition and local outrage. He did not hesitate, therefore, to recommend what was afterwards called the Coercion Act.

The effect of this law was immediate. The murderers and 'prædial agitators' were intimidated. Life and property were again restored to their ordinary security. It became possible to sow the seeds of improvement; for the soil which was lately covered by the waters of strife, was made fit for its reception.

A plan was devised for removing some of the more glaring deformities of the Irish Church. Church cess was altogether abolished. Ten Bishoprics were suppressed, the incomes of the clergy were subjected to a graduated income-tax. This plan received the unanimous support of the Cabinet, and was carried in both Houses of Parliament.

Still, the Church Establishment of Ireland remained the Church of one-eighth of her people. The religious instructors of the majority were left dependent on voluntary contribution. If Church Establishments were a good, why leave the priests of the great majority dependent on the charity of their flocks? If Church Establishments were an evil, why leave so gross an instance of pay without congregations as the Protestant Church? The opinions of some members of the Cabinet were known to be in favour of a reduction of the Establishment. Lord Wellesley, who had succeeded Lord Anglesey as lord-lieutenant, had advised, in January 1834, the issuing of a Commission to ascertain the respective numbers of Episcopalians, Presbyterians, and

Roman Catholics. Mr Ward had given notice of a motion for a day in May, respecting the Irish Church. But it now became obvious that Lord Stanley, Lord Ripon, the Duke of Richmond, and Sir James Graham, would admit of no further measures respecting the ecclesiastical establishments in Ireland. Lord Stanley, Sir James Graham, and Lord Ripon tendered their resignations. They were accepted by Lord Grey. The Duke of Richmond, who had been absent in Paris, followed the example of Lord Stanley.

The Commission advised by Lord Wellesley was now issued; and it was hoped that the administration of Lord Grey might have the glory of settling the long vexed question of Ireland. But it was not to be so. Lord Grey wished to renew the Coercion Bill for a year longer; Lord Althorp, refusing to concur, tendered his resignation. Lord Grey sent his own with that of Lord Althorp to Windsor.

Let us now consider, in as far as a short experience will allow us, the effect of the measures of which we have traced the outline.

The great measure of Parliamentary Reform has now been in operation for about thirteen years. The Tory predictions of destruction to the Monarchy and ruin to the Church have been signally falsified. The institutions of the country have been more secure; the consent of the people to the acts of their representatives has been more readily ascertained; the power of great men to send their nominees to Parliament has been, to say the least, greatly curtailed. The representatives of the seats of our Manufactures, have brought to the discussions of the House of Commons much practical knowledge, and much enlightened argument. The House of Commons has been rendered a more adequate expression of the sense of the nation,—consisting as it does of Commercial and Manufacturing, as well as Agricultural communities.

The want of adjustment in the plan of reform adopted to any theory of representation, was supposed by many ardent Reformers, as well as by many sagacious Tories, to be a capital defect. But the one party has been disappointed, and the other surprised by the result. It is quite true, that had England never sent members to Parliament, it would have been absurd to have allotted the same number of members to Harwich and Chippenham, as to Middlesex and the West Riding of Yorkshire. But, in a country like ours, usage and prescription, which for five centuries had preserved Old Sarum, was held a good plea for many inequalities in the new system.

The language of Lord Althorp, himself a strong reformer, was well calculated to check the desire for further change. On Mr Grote's motion for the introduction of the Ballot in 1833, he thus expressed himself—

'Since he had had the honour of a seat in that house, there had been one division on this question, on the motion of an hon. and learned gentleman opposite, (Mr O'Connell,) in which he had voted for the adoption of the ballot, and he had since expressed himself in favour of that mode of taking votes; but he had never stated or urged it as a *sine qua non* of good government. . . . . When the question of Reform of Parliament was before the House, though there were some who wished that that measure should have gone a great deal further, there was a readiness, for the sake of the great measure of Reform, to abandon the ballot; that was, in fact, the universal feeling of the country. If that was the case, if they, uniting with the great majority of reformers, (for those who espoused the ballot were not the majority of the reformers,)—if, uniting with them, they obtained the measure of Reform, it could not be right and proper, or just and fair, to turn round and say, "having obtained this advantage, we will make use of it in order to obtain the ballot." It had been stated by the hon. member who brought forward this motion, that when his noble friend introduced the Reform Bill, he said that this was a question not immediately connected with that measure. But he appealed to every gentleman who was in the last Parliament, and who knew the whole proceedings while the question of Reform was going on, whether the promoter of that measure did not contend, that, as far as the representation of the people was concerned, it was considered and proposed as a final measure. He had stated that frequently to the House. It might be said, undoubtedly, that the vote he should give to-night would be inconsistent with that which he had given on the motion of the hon. and learned gentlemen; but if he were now to vote for the motion of the hon. gentleman, he should be acting more inconsistently with every thing he had stated during the whole progress of the measure of Reform.' *.

Thus, Lord Althorp interpreted more extensively than any one has done since, the virtual engagement that the Reform Bill was to be carried as a final measure.

His declarations, those of Lord Grey, and those which have been since made, seem to have set at rest the formidable proposal of a New Reform Bill. During the last five years, no serious discussion has taken place in the House of Commons upon extension of suffrage, or the duration of Parliament. These seem to have settled down into acquiescence, more or less cordial, in the settlement of 1832. Few examples will be found in history of so great a change, accomplished with so little disturbance.

* *Hansard*, third series, Vol. xvii. p. 657.

The importance of the reform effected in the representation, can only be measured in a long course of years. On the one hand, it must be admitted that the influence of a free press, and the long habits of Parliamentary discussion, mitigated the evils of a sham representation. On the other hand, the change made was of such a nature that the influence of property was rather diffused than diminished. But the intelligence and union of the new classes of voters will, in any future struggle, ensure the ascendency of the public cause against the cause of any court, or any class, or any individual. It is only when the people themselves are divided or indifferent, that partial interests will have a chance of success.

The abolition of Slavery will ever be one of the most remarkable events in the history of mankind. The conversion of the great majority of the inhabitants of our West India Islands from slaves into freemen—the short period in which the change was accomplished—the voluntary gift of Twenty Millions sterling for so generous a purpose—the acquiescence of a body of men who had hitherto resisted any invasion of that which they deemed their property—the peaceable, honest, Christian joy of the emancipated negro, free from scourge, free from outrage—the exchange of slavish fears and disguised hatred, for willing obedience to law and the bonds of brotherly love—these are events in the history of a nation which indeed show that peace has her victories!

Of the other great changes introduced under the administration of Lord Grey and Lord Althorp, we have scarcely room to speak. The retrenchment of useless offices—the reduction of salaries—the opening of the China trade—the review of the Bank Charter—the restoration and amendment of the Poor Laws—the mitigation of the Criminal Law—the improvements in other departments of law and administration—will have their place in the history of these times. When compared with the doings of any Tory administration, during any four years, or any forty years of their rule previously to the Reform Act, the measures introduced and carried by a Whig government, between November 1830 and November 1834, appear truly astonishing.

But, for our imperfect and limited sketch, it is more appropriate to notice the spirit in which these measures were proposed, than to portray, with correctness, their separate details. That spirit was the spirit of English freedom, for which Hampden and Sydney laid down their lives; for the sake of which a faithless King was banished, and the power of France successfully defied. It was that spirit which roused Chatham to oppose the oppression of America, and Fox to vindicate the outraged constitution of his country. Lord Grey learned from Fox, as Fox had learned

from Burke, the task of defending and improving the laws of England; the limits to which popular rights should be carried; and the bounds within which popular license should be restrained. It was neither for democracy nor aristocracy, not for the liberty of ancient republics nor for the perfection of an ideal commonwealth, that Lord Grey and Lord Spencer administered the affairs of England. It was to purify and to maintain the English constitution that they gave their lives to labour, and exposed their names to the reproach of the prejudiced, the timid, and the interested.

We have said, at the commencement of this article, that the time has not arrived for biography. When that time shall come we have no fears that the reputation of the statesmen, who have lately been removed from among us, will be diminished by the more intimate knowledge of their lives. The publication of the Diaries and Memoranda of Sir Samuel Romilly, by his sons, has tended to throw a fuller light upon the pure integrity, the scorn of baseness, the love of truth, and the enlightened opinions which distinguished that excellent man. The records of the early studies, and mature efforts, of Mr Horner, have preserved, for lasting memory, the example of an understanding almost mathematical in the strictness and severity of its political reasoning, combined with a soul the most lofty in its aspirations, the most indignant in its hatred of oppression, and the most disinterested in the pursuit of the people's welfare. Neither of these men belonged, by any hereditary tie, to the Whig party; they joined it from sympathy in a public cause, and were faithful to that party, and that cause, to the last moment of their lives. Earl Grey and Earl Spencer were Whigs from their first arriving at an age to take an interest in political questions. But their mature convictions did not belie their early impressions. When Lord Grey, at sixty-six years of age, undertook a difficult and responsible office; and when Earl Spencer, relinquishing the calm tenor of his private life, gave up his beloved pursuits for a great duty, and a manifest peril—they relied on the patriotism and zeal of the Whig party. Men may differ about the wisdom of their parliamentary measures, or the ability of their civil administration; but the noble, exalted, stainless spirit of these two men, must always be venerated as long as public virtue is admired, and the name of England has its place in history.

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ART. I.—*The Lives of the Lord Chancellors and Keepers of the Great Seal of England. From the Earliest Times till the Reign of King George IV.* By JOHN LORD CAMPBELL, A.M., F.R.S.E. First Series. Three volumes 8vo. London: 1845.

THE Legal Magistracy of France, with its virtuous Chancellors and courageous Presidents, was one of the chief glories of the ancient Monarchy. Their names are a line of light along French history; and, while no system can keep up a race of L'Hopitals and D'Aguesseaus, it is more than mere good fortune to have produced them once.

If the renown of English lawyers has been less national than professional, this is not from any want of national encouragement. There have been books written, expressly to declare the 'Grandeur of the Law.' Its escutcheon is hung out to the world, emblazoned from top to bottom with legal fortunes and legal peerages. Names already noble, like that of Scrope, are among its early dignitaries: for many Judges, as well as Chancellors, were once as often in coat-armour as in their robes. Apprentices to the Law might have to work up their way to rank and fortune on harder terms, than was agreeable to persons of knightly birth and breeding:—But, by the time of Fortescue, the Law had be-

come a Gentleman's profession; and an Advocate in England had more brilliant prospects open to him, than in other countries. The fact of the gentle blood of English commoners being most ordinarily made (what goes under the name of) Noble, 'by carrying a bag in Westminster Hall,' is certainly not the novelty that Horne Tooke chose to hold it. Erasmus was struck by it, on his coming among us in the fifteenth century. Coke and Spelman, again and again, bid their reader notice how almost every manor-house, in that Norfolk they were so proud of, had been planted and settled from the Law. The Law, too, has antiquities as picturesque and legendary as the Church. Mr Addison, in his history of the Temple, points to something more than a mere sympathy of place between its old and its modern occupants. There are the solemn pageantries of the coif, and calls of mediæval Serjeants. There are the masques and revelries of Inns of Court—the brawls that were led by Benchers and by Judges—and the vision of courtly Hatton, when the 'seals and 'maces danced before him,'—all of them still surviving in chronicle and in song. While, yet further in the distance, from time to time is seen a figure (like that of *Old Mortality* among the Covenanters' tombs) busily replacing, in the ancient Chancery and Exchequer, their marble chair and marble table.

Such are the pomps and vanities of the legal Antiquaries of England, when they put on their gaudy gowns. The men who do the daily work of the profession, have neither time nor taste for these ornamental fancies. They fall in at once with the views and humour of their own generation; and with that wiser sense of the *utile et honestum*, which belongs to modern times. They willingly agree to put the inherent glory of Westminster Hall upon truer grounds. The public may perhaps go more completely along with Burke than the profession is disposed to do, in thinking that a learning, of which such a book as 'Coke upon Littleton' is the boast, must be better fitted to sharpen the faculties than to enlarge them. The public will also be naturally more alive to the disadvantages, to which the practice of an Advocate (a practice always necessarily full of peril) is especially exposed in England;* from its being subject there to certain maxims, the authors of which, if not Jesuits, were certainly neither exalted stoics nor scrupulous divines. It is not the less true, however,

* 'The Lawyer: his Character and Rule of Holy Life, after the manner of George Herbert's Country Parson;' by Edward O'Brien, Barrister-at-law.' Every reader of this true-hearted appeal will grieve to learn, that it is already a monument over its author's grave! But truth is, that rules and maxims go only a little way: All, or almost

that the magnetic storms, by which an advocate's moral compass is disturbed, are nothing like so frequent and severe as shilling galleries believe; and there can be little doubt but that the improved morality of modern times will succeed in raising every rank of the profession in public opinion, as it has already raised the Bench. Under the Stuarts, the Bench was, for the most part, under worse suspicions, and accordingly was much more unpopular, than the Bar. The counteraction has been most complete. The selfsame public, which is still so credulous of scandal at the expense of the law and lawyers, would at present be disgusted at the least sign of a want of reverence for the characters of the Judges. Bentham destroyed his reputation for common sense or common fairness by his *tirades* on them.

But this is all. England must make the most of the boundless confidence, with which the practical administration of justice in its Supreme Courts has now been long regarded. It is enough for use; and may justify an honest pride. Yet robes of unspotted ermine make of themselves no great show in history. This brings us to the question—How we can account for the difference, in this respect, between France and England? For the fact is, we think, indisputable. Evidence of it has penetrated into, perhaps, the best of our Biographical Dictionaries. A most likely place, indeed, for it to appear in: since, writers of these dictionaries (to acquit themselves creditably of their task) must be often comparing the characters they are drawing. The Legal Magistrates of France were the favourite heroes of Dr Aikin: he found no corresponding names at home. Hume has selected four distinguished persons from the English Law—More, Bacon, Clarendon, and Whitelock. Three of them were Chancellors, and the last, Lord High Commissioner of the Great Seal. Lord Campbell will perhaps be surprised at seeing Whitelock in such noble company: Mr Carlyle still more so. In estimating the nature of the reputation attributed to the first three persons, it must, however, be remembered, that very little of it was professional even; and that no part of it had the least connexion with the high judicial station they had held.

We do not imagine, that the superiority of the old Magistracy of France over that of England can be explained, by supposing that it represents the degree in which the Civil Law, as comes-

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all, depends on the characters of the men who must apply them. Contrast Lord Campbell's anecdotes of the worldly Francis North with the well-known anecdotes of the unworldly Matthew Hale. Yet they were contemporaries; North with as much business as he could get; Hale with as much as he would take.

ticated in France, was superior, for centuries, to the vernacular Common Law of England. The study of a system founded on the Civil Law, would have more philosophy in it than can be found in the black letter of the Year-Books. So far is true. But, the advantages obtained from the classical derivation of the learning of the *Palais*, were counteracted by serious evils. It was not without reason, that Hale wondered at the affectation of the French lawyers, in imitating the Roman orators in the turn and colour of their pleadings. On the one hand, if Domat and Pothier learned both the matter and manner of their jurisprudence from the wise Civilians of ancient Rome; on the other hand, the rhetoric of the *Forum* too often overlays and *theatricalizes* the native dignity of even D'Aguessau himself—of that D'Aguessau, who had, at twenty-two, the credit of doing more to reform the eloquence of the bar, than he was afterwards enabled to accomplish, through a long life, in the reformation of the law. Besides, had the difference in question arisen from the difference in the subject-matter of their studies, it would have prevailed throughout. English Civilians would have been superior to English Common Lawyers; which never was the case, after the Common Law had once got to man's estate. Also the supposed difference would, in this case, have been as strongly marked at the Bar of the two countries, as upon the Bench. Now, of this also there is not the least appearance. The English Bar, on the whole, always stood as high, we believe, as that of France. We must look elsewhere, therefore, for an explanation of the greatness achieved at times by the Legal Magistracy of France, beyond what that of England has ever reached. None of our countrymen are likely to accept the conclusion, that, on a comparison of races, French and English, the genius and character of the French people, as they come from the hand of nature, are more eminently adapted for Judicature, in its highest place and most commanding views. Where, then, can the solution of the problem lie?

Two causes, perhaps, may solve it. One, being the difference in the methods which were pursued by the two countries, for cultivating in their judicial Magistrates the faculties and qualities of most importance in the performance of judicial duties. The other cause, and apparently a much more powerful one, being the far higher station which was occupied by the Legal Parliaments of France. It approached at times to that of the English Constitutional Parliaments; and represented a dignity and influence, far above any thing to which professors of the law in England, as a body, could ever look.

The first of these causes—the difference in training—is a very mixed question. Hale places the meridian height of the English Common Law in the reign of Edward III. Yet Sir John

Delves, whose feats on the field of Poitiers are celebrated by Froissart, was one of the Justices of his King's Bench; and Scrope was in almost every battle of any consequence for forty years! From the time, however, of the law becoming a jealous mistress, and requiring that her servants should enter upon her service from their youth upwards, it has always been the habit in England to make young Judges out of old Advocates. While, as we understand it, upon the French system Judges usually got on the bench at so early an age, that the most valuable part of their professional education was strictly judicial. According to English usage, the best way of securing a good Judge, is to take the Government Lawyers for the time being; or to trust to the criterion of admitted skill in special pleading, or adroitness at *Nisi Prius*. Chancellors, to be sure, were for long an exception to all rule. A few had the great good fortune of being brought up as Clerks in Chancery. For the rest, that anomalous judgment-seat was long content with little more law than might be wanted by St Louis sitting under his oak, or by Henry V., as he is described to us, leaning on his elbow after dinner to receive petitions. For ages, the office of Chancellor was made, in most cases, a purely political appointment: to be filled up from court or camp, pulpit or university—with the most producible man, it may be hoped, that political exigencies would allow. Meantime, in France, their judicial Magistracy was constructed upon an entirely opposite principle. Expectant Chancellors (while yet Crown Lawyers) appear there less in the character of Attorney-Generals than of future Ministers of Justice. We read of minors, of the age even of eighteen, already Presidents. Suppose another ten years to have been ordinarily added on to this scandalous precocity—still, in their passage through the seminary of Advocates, they will have been studying there as future Judges. It was not to them, an arena for 'the dazzling fence' of practice; but only the school of their common science. On the Bench, in its several approaches and departments, their legal mind and nature had to be formed. Thus, they began in the career and in the character in which they were to end. We could fancy that the seeds of their noble *Ordonnances*, and of their truly legislative learning, are to be found in the unity of their position.

There were gross abuses in the Parliaments of France. We know most of that of Paris: Besides the abuses, which must be inseparable from the venality of charges, there were many prejudices, much violence. The faults of its later period are freely exposed in D'Aguessau's *Mercuriales*. Yet, in spite of all, throughout the civil troubles of that long unquiet kingdom, we look out for it, as Henry IV. of France bade his soldiers look

for his white plume at the battle of Ivry. The noble bearing of the French Parliament, full of majesty and courage, may have been partly owing to the pure and simple source from which, regarding themselves all along in the light of preparatory Judges, their natures had been supplied.

'Doris amara suam non intermiscuit undam.'

But it must be attributed mainly to the second cause, by which we have supposed that the greater reputation of the French Magistracy may be explained—namely, to the high Constitutional station which they filled. There were, in all, thirteen Parliaments—the Parliament of Paris at their head. In their body and their train, they comprehended as many as five-and-forty thousand families; the flower of the *bourgeoisie* of France. The States-General were in abeyance. The Nobility were either scattered in the provinces, or were flocking to court, to be its embroidered and servile valets. There was not a single object to be seen across the waste, erect and independent; nothing to which the people could turn for a rock of defence or place of refuge—except their Parliaments. In this respect, and from the same cause, (there being nothing else on which to fix it,) the French Parliaments centred in themselves much of the same sense of authority and of self-reliance, by which the *Ulemas* in Turkey have become a check on even the Sultan's will. They were in possession of the steady influence of great wealth—could strike, as on a gong, by the commanding spell of popular talents—and, when they appealed to inspiring recollections in the past, the confidence of a nation answered to their call. Yet that which made their strength in one sense, made their weakness in another. They stood, it is true; but they stood alone. They were also, necessarily, under the restraint of that moderation and love of order, which are the soul of every Magistracy, especially of the Magistracy of the Law. It is not to be wondered at, therefore, that they were not strong enough to *conquer* the ministers of despotism. It was much, that they could always alarm, and frequently control them. Such a corporation, perpetually as it were under arms for their own rights and for those of their fellow-citizens, was a true gymnasium for forming decided men—men of comprehensive views and fixed principles, of earnest purpose and devoted courage. And accordingly it formed them. Meanwhile, in what a dependent, precarious, and isolated state were their judicial brethren left in England! The Chancellors, in particular, were grievously tempted, and, except when Churchmen, proportionally exposed. When unworthy compliances were demanded of them, and the countenance of their sovereign darkened towards them, they had no powerful Corporation to fall back upon. The condition of the

Judges was only a shade or two better. Mathieu Molè, during the hottest contentions of the *Fronde*, must have fully appreciated the glory as well as the security of his position; and have looked with mingled scorn and pity on the members of the Robe in England, where, what are called the honours of the profession were too often turned into a degradation and a snare.

Judges, even Judicial Bodies, cannot mix in politics and come out unhurt. The two services are not, however, quite as opposite as those of God and Mammon: And, under very particular circumstances and for a time, the balance may be in favour of the union. But, the position even of the French Parliaments was essentially a false one. In case it had been prolonged beyond the necessities which justified it, all the glories of independence and elevation would have been bought too dear. At the present day, for instance, Representative Government enables us to reconcile liberty and order on cheaper and surer terms. Lawyers, who enter now upon the war of politics, enter on it single-handed and at their own cost. A *Parliamentum indoctum* would certainly never do: Yet of all the legal celebrities, upon whose biography Lord Campbell has at present entered, how few are they whom his popular narrative will not have made much more widely known than they ever were before! They are taken, of course, from the most political part of the profession; yet, how few are there whom (as far as their history can be recovered) Parliament would have missed—except upon legal questions! Of these, Clarendon is one; and, he tells us himself, that as soon as he took up politics in earnest, he laid aside the Law. A certain portion, however, of the legal ability of England, will, somehow or another, always find its way into public life; while nothing, or next to nothing, of its Literary genius is carried off in that direction. It is far otherwise in France. M. Guizot's Histories are stopped. We hear not a word about a History of the Parliament of Paris, which we have long been looking forward to, as the natural supplement to the History of the *Fronde*, by M. St Aulaire. Waiting for them, and to beguile the time, we recommend Floquet's History of the Parliament of Normandy, to our readers. There are many things in it, which an English historical lawyer should care to know.

We must not wish that Lord Campbell may be permitted to finish his Lives of the Chancellors of England in the uninterrupted leisure of a man of letters. But, it is a great pleasure to us to find that his well-earned leisure is so happily employed. An English Chancellor is an amphibious kind of person even now: at once and the same moment a reverend Judge and a party Minister of the Crown. He was a much more complicated

character, during the greater part of the period comprehended in the present volumes. It is only when we are some way through them, that Chancellors begin to be concerned in the comparison which we have ventured upon, between the Legal Magistracies of France and England. At first, the Chancellor apparently had no Judicial duties to perform. Afterwards, he had been some time in the exercise of them, before there is a shred of evidence from which we can conjecture who succeeded, and who failed. To the last, (so late a growth was our present Court of Chancery,) our chief information, as well as interest in these volumes, has little reference to the Chancellor as a Judge. We seldom read of him but as a Politician. In this character, dividing the volumes by their bulk and pages into nearly equal halves, and giving the first half to Ecclesiastics, and the last to Lawyers—Lord Campbell has furnished us with the materials of a pretty large induction. The two professions appear before us by their chiefs, age after age, as schools in the art of government. Which of these schools of government was the best, or rather, which of them was the worst, judging of them by the scholars they sent forth? What conclusion does Lord Campbell enable us to draw in this respect? Again, which of the professions suffered most from the damaging effects of the experiment upon the characteristic virtues of their proper calling?

This may seem an ungracious beginning to a review of Lives of English Chancellors. But we are meaning kindly by our readers. Most of them will bring to Lord Campbell's book no other notion of a perfect Chancellor, except what they may have seen or heard of in the persons of Lord Eldon or Lord Cottenham. Our first object, therefore, is to put them upon their guard. It is a very different sort of dignitary, whom they are about to meet under that solemn name. This they must remember. It is the fact: and one, respecting which we are desirous, in the next place, of suggesting a consideration, by way of corollary. We mean, the strong historical probability, that the Chancellors and their times accorded with each other. The marble chair of Chancery would not have been occupied by priests or soldiers through so many ages, when scarcely any thing else was done on system, but that their mode of dealing with the questions brought before them, was in reality better suited to the rude necessities of the times, than would have been another hybrid Court at Westminster, such as exists there at present—administering a nondescript variety of the Common Law, and passing it off as Equity. Lord Campbell's intimations to the contrary, are strong and frequent: and, we have as little hope of bringing him over to our opinion, as we should have had of reconciling Coke to Ellesmere. Yet we cannot help suspecting him of an anachronism;

of a judging of the thirteenth and fourteenth centuries by the nineteenth. A strong hand, and a rough equity—the *arbitrium boni viri*—are often wanted in simple and irregular societies. Take the comparatively golden age of Edward III. To the great comfort of Lord Coke and Lord Campbell, three Chief-Justices (Parnynge, Thorpe, and Knyvet) sat in his Court of Chancery for about six years, nearly in succession. As the two first died in office, and as Knyvet resigned only to die, they must have been put there, dying men. Lord Campbell assumes, however, that these appointments were most successful, and gave universal satisfaction. We wish he had printed his authority for the judgments attributed by him to contemporaries, in these and other cases. The Commons had petitioned that none but laymen might be appointed; not intimating any wish that the laymen should be lawyers. Their subsequent petition in the time of Parnynge, that the Chancellor should be a Peer, does not look much like satisfaction. We know that, while he was sick, two Masters sat at the seal for him: and that Thorpe gave over the seal to the custody of the Masters. The Common Law experiment, therefore, does not appear to have been made under favourable circumstances, in the persons of these Chiefs. Were there any truth in the supposition of their having greatly succeeded, the disappointment which followed, we are told, on the failure of Sadyngton, a Common Lawyer who succeeded them, would soon have been got over. Yet what is it that we really find?

Every lay Chancellor for the next hundred and fifty years was either a soldier, or a courtier! The learning of the Common Law was evidently in small request in the Court of Chancery to a much later period: much later than could have been expected. Evelyn observes upon it. The law of the court was still so loose, that, even at the beginning of the seventeenth century, Archbishop Williams could administer it without provoking any serious animadversion from the jealous lawyers who were practising before him. Nor was this all. As late as the end of the same century, when the principles and course of equitable interposition might be presumed to be becoming settled, they were so much at variance with the rules and proceedings of the law, that Sir Orlando Bridgeman, the most eminent Common Lawyer of his day, on being removed from the Chief-Justiceship of the Common Pleas to the Court of Chancery, failed completely. It was discovered that 'he had not a head for that kind of busi-'ness.' We need hardly say that there is no such distinction now, as a head for Equity, and a head for Law. In the mean time, Lord Campbell should console himself in his character of Biographer, both for the latitudinarian profaneness of our criti-

clem, and for the paucity of Common Lawyers among his early Chancellors. His Chancellors will not be less useful to him for his present purpose, from not being lawyers. There may not be much more to be said of most of them, than of Augmendus, Referendary to Ethelbert, with whom his series of *Tableaux* opens. But this little would have been still less, had they passed their days with their clerks in framing writs *in consimili casu*, or in hearing objections to a Master's report upon a title or an account.

Notwithstanding the occasional dulness from which no series of official heroes, spiritual or lay, can be exempt, a series of portraits, commencing with Augmendus and St Swithin, and closing with Lords Brougham and Lyndhurst, was a lucky thought. What a gallery to walk round and think in! Biographies are in literature what portraits are in painting; and they have become of late almost equally the fashion—surely with far more reason. Since, not only are the lives of men truly eminent among our most effective moral studies, and the best company we can keep, (a compliment we can hardly pay a gallery of pictures:) but biography passes easily into history. Many a person who has had nothing in his character more than in his countenance worthy of being held in remembrance, has yet had the fortune to get so mixed in among more striking figures in eventful times, that for the sake of circumstantial truth, and in order to make the group complete, we must not let him die.

There is also another circumstance, by which this class of memoirs wins upon our confidences. They have little to say to that stately dame who has been called the Muse of History; who receives in form and ceremony and flowing robes, entertains her guests with philosophical generalities, and shows them, as reflected from some gilded mirror, misty distances and panoramic views. Their office seems rather (as much as possible) that of contemporary chroniclers. Their business is with single figures, with the tastes and habits, the hopes and fears of individuals. It has been remarked, (and truly,) that an ordinary enough sort of man who should write a sufficiently full and honest account of his life and adventures, might make sure of having many more readers at the end of two hundred years, than the most popular author of his day. The object of a biographer of half-forgotten lives is, to recover and put together their broken fragments, and to breathe again into them the breath of life. In following the course of any one individual, we must be often taken to places where we have never been before: and even when we are brought out upon the beaten track of history, the effect will be quite different from what it would have been, if we had been upon the turnpike the whole way. We have no doubt but that many a

veteran traveller, who has wandered far and wide in general histories, will admit this to be the case, on making the journey with Lord Campbell and his Chancellors. We heartily wish that Mr Milman, or some other honest and capable divine of the present day, would draw up for our instruction a similar series of those English prelates, who have maintained (in the only apostolical succession historians can recognise) the same relation to the Church and things spiritual, which English Chancellors for ages stood in to things temporal and the State.

Lord Campbell has the natural wish of a biographer to make his heroes as agreeable as possible. He shows them off to us, therefore, any where rather than in their court,—a great mercy to that lounging person called the general reader: since Chancery is a place so dark and intricate, that when once *thrown* into it (a saying as significant as *falling* into love) it is as difficult almost for a reader as a suitor to get out. But the public is so much in the habit of connecting an officer with his office, that we must stop a moment at the door of the said office and look in. This is the more reasonable when we consider that it is only by being Chancellors, that the subjects of Lord Campbell's biography have come under the jurisdiction of his pen.

Chancellor is a wide word—imperial, pontifical, feudal. Of humble origin, from denoting merely the Usher, Amanuensis, or Secretary to the imperial court, it was transferred to the courts of feudal sovereigns, with all the advantages by which juxtaposition naturally favours ministers as well as lovers. The Normans settled in England and Sicily about the same time. On William and Roger setting up for themselves as kings over their respective conquests, they immediately followed the example of France; and made the attendants on their own household affairs or person, principal officers of state. The office of Chancellor was the same, at first, in the three countries. The aggrandizement of that of France waited for the Chancellorship of Guarin, (at the beginning of the thirteenth century,) and is to be attributed apparently to his personal ascendency. The aggrandizement of that of England had taken place sooner; although it was not till towards the end of the century, on the abolition of the office of Grand Justiciar, that it assumed the headship of the law,—of all its supremacies the most enduring. It is curious to observe, while the Chancellorships of France and England at last parted from each other, in their greater characteristics, almost as widely as the Parliaments of the two kingdoms; yet, under their common name, they preserved an amazing similarity in various trifling instances. Among others, the French were as superstitious as ourselves, in all that related to the Custody (if not the

Sovereignty) of the Seals, even after the Custody of the Seals had been raised into a separate dignity. Thomas Lord Hoo of Luton, one of Queen Elizabeth's ancestors through the Boleyns, was maintained by the English sword in the Chancellorship of France for fourteen years towards the middle of the fifteenth century. He cannot be supposed to have been a likely person to assimilate the practice of the two Chanceries in more important matters.* The Conqueror had brought over Maurice his chaplain with him into England. He placed him, with the name of Chancellor, at the head of a College or Company of Royal Notaries; which consisted also, after the fashion or necessity of the times, of King's chaplains. In his character of Arch-Chaplain, the Chan-

* The numerous references in Ducange, under the words *Cancellaria*, *Capa*, and *Capella*, are very curious, etymologically and historically. *Capellæ*, or Chapels, were so called, from being the holy places in the royal palaces where the Kings of France kept their relics; above all, the great national relic, the *Capa*, the cape or cloak of St Martin, which went before their armies in battle. The principal royal chapel soon became a treasury of another kind—the place of deposit for royal charters. The clerks who assisted there, as *Capellani* or chaplains, added, in consequence, the business of royal notaries to their spiritual offices. In this way, the Sainte Chapelle at Paris, the Rolls Chapel in London, and the Kings' Chapel at Edinburgh, were identified with their respective Chanceries. The King's chaplains are found immediately after the Conquest (W. 1 and 2) in this double capacity. They attest charters in a body, as national witnesses; and they are promoted, as favourite ecclesiastics, to the highest situations in the church. It was in right of this original connexion, that Charles II. was enabled, when Burnet had rendered himself obnoxious to the Court, to deprive him of the preachership of the Rolls Chapel, on the ground of its being a royal chapel. The principal link which binds the Chancellor at present to the clergy, (the large amount of Church patronage left at his disposal,) was put into his hands, in the first instance, as a means of providing for his own particular class of court chaplains, the clerks in chancery. In the beginning of the reign of Edward III., the immediate objects of this provision were obliged to have recourse to Parliament by petition, to compel their supposed patron, Lord Chancellor Burghersh, to a specific performance of the trust. On the Reformation, the legislature completed the transition which custom had already begun. The Fellows of this legal College got rid of Orders first, and then of celibacy; so that the more fortunate Chancellors of modern times are at liberty, in the disposal of their ecclesiastical preferment, to regard no other claim but merit. Lord Nottingham appears, upon entering upon this department of his charge, to have made as solemn a reference to his conscience as Lord Eldon could have done. We wonder whether he acted up to it as well.

cellor became Keeper of the royal conscience, and of the chapels royal; in his character of Grand Notary, he became Keeper of the Great Seal. This omnipotent *seal* (the representative of the royal will) was raised to the dignity of the plural, and transformed into *the Seals*, either out of compliment to the phraseology of France, or in consequence of the Conqueror having made of it a double seal; with his equestrian figure, as Duke of Normandy, on one side, and his robed figure, as King of England, on the reverse. There was at no time, apparently, any law requiring the Chancellor himself to be an ecclesiastic—except the obligation, at first as strong as any law, of being able to read and write. In course of time, laymen were able to comply with these conditions; and on their succeeding to the seals, the conscience and the chapels, and the greater part of the church preferment belonging to the Crown, passed under their charge. With regard to the royal conscience, this is not the place for dwelling on the help which Henry III. and Edward I. had from Merton and Langton, their ecclesiastical Chancellors, for dispensation from the statutes for observance of the Charters: or which Edward III. got from his military one, Bourchier, on occasion of his scandalous *Dissimulavimus*. We will say no more upon this part of their office, than that there have been Chancellors, even since the days of Lord Keeper Williams, in whose keeping the said conscience was not much more safe, than Charles I. and Lord Strafford had found it to be in his. The conscience of Lord Eldon was sufficiently enlightened for all the purposes of George III. Lord Loughborough had before attempted to interpret his coronation oath to him, on the principles of common sense. But the royal conscience kept its ground. It was not to be imposed upon by 'Scotch Metaphysics,' so disguised.

The different royal seals—the great seal, the privy seal, the signet and sign-manual—are a puzzle to the uninitiated. But the Great Seal was from the first the only constitutional exponent of the royal will, in the case of such writs and grants as formed the principal public vouchers and assurances of the realm. The Keeper of the Great Seal, therefore, was naturally selected to declare the King's purpose, as often as the nation was called together in council, on affairs of state. The only exceptions, during the time he was an ecclesiastic, appear to have been the occasions when the Council met, either to take measures against the court of Rome, or on judgments of blood. By the time that the national council branched off into several divisions, (some legislative, some judicial, some administrative,) the Chancellor was found to be already by prescription Speaker to its Upper House, the House of Lords. The

Chancellor is said to have been so indispensable to the royal councils that he attended without a summons.

The Officer whom we have been describing, can easily be believed to have stood, almost side by side, with the Grand Justiciar among the Officers of State. From the time that Edward I. made an end of the Grand Justiciar, the Chancellor collected in his own person, by the virtue of his office, more of the royal authority than any other Minister. The mere fact of Burnel holding the Great Seals at this important change, for eighteen years together, (a length of cancellarian days of which there is no other instance except Sir Nicholas Bacon, until the reigns of Hardwick and of Eldon,) must have communicated to the office much of the influence of its holder, and have greatly consolidated its power. Far more so, if Burnel was a man of the ability and favour for which Lord Campbell gives him credit. Still the Chancellor was only a Minister, a removable Minister; and during the many years in which the King and Barons were carrying on a struggle, more or less avowed, whether England was to be a Monarchy or an Aristocracy, it was one of the most frequently recurring questions—whose Minister he was to be?

Official incomes, direct and indirect, are subjects of conjecture even among contemporaries. But, without supposing that the Oriental magnificence of Becket's establishment was maintained from this appointment only, the sums paid down as purchase money for the office, prove how much was expected to be made out of even its uncertain tenure. It was one of the ecclesiastical advantages of the times, that these uncertainties were a little mitigated in the case of the clergy. The experiment on the life of Becket answered too ill to be repeated; and it is plain, not only from Fitz-Stephen's description of the glories of the Great Seal, (which Littleton thinks exaggerated,) but from Lord Campbell's return of their preferments, that an Ex-Chancellor must have been uncommonly unlucky who had not provided himself with a Bishopric to retire upon. Down to our own times, frailty of tenure has been the price which the Chancellor has necessarily had to pay for the political authority mixed up with his office. A retiring pension has come in place of the Bishopric.

The Chancellor of whom we have hitherto been speaking, is as yet only one of the royal council, or *Aulæ Regis*. He is distinguished, however, from the other members of the administration (to speak in modern language) by certain ministerial duties, which make him *primus inter pares*. From the nature of the executive authority put in charge to him, his civil primacy would seem complete—only that he was living upon its chances but from day to day. In quiet times, (those rare exceptions, lasting

only as long as the sovereign was strong enough to carry every thing with a high hand,) the sovereign was sure to make him feel his dependence at every moment. While, in turbulent times, all paper authority disappeared before the armed retainers whom contending factions brought into the field. When reduced to its lowest point of power, the Great Seal, however, was still a mighty instrument. In the most desperate crises it was more potent than even the sovereign himself. The sublime hypothesis on which it moved and had its being, set all logic at defiance, and helped the nation over every difficulty. Sovereigns might go mad, be deposed, or die. The Great Seal was there—to anticipate the dilemma and stop the gap! It bore a charmed life. There was no demise of it. It was subject to no minority. It—*or alter idem*—could remain at Westminster, and arm the kingdom against a fugitive or abdicating king; whose disenchanted *clavis regni* might follow him in vain to a council of Lords at York, or wait on him in exile at Breda, or be thrown into the Thames!

Henry VI. ascended the throne when he was nine months old. Its mechanism was so perfect, that the Great Seal went through the ceremony of appointing a regency with (to say the least *for* it) as much discretion as was ever afterwards exhibited by the monarch whom it had the misfortune to represent on this occasion. Our ancestors were naturally chary of the keeping of this magic spell; and watched it as bees watch their Queen Bee. We need not wonder, that Wolsey's enemies charged it on him as a crime, that he had carried the Great Seal out of the realm; or that the burglars who got away with Lord Guilford's maces, should have been disappointed of the seals in consequence of the Chancellor having always taken them to bed with him, after the death of Lady Guilford. The responsibility, moral and ministerial, incident to the bare possession of a 'sigil,' almost as powerful to conjure with as the fabled one of Solomon, was burden enough (as Bacon says of marriage) to make a man on the instant seven years older. The custody, however, was trifling in comparison of the use. From this last responsibility one exception was attempted;—the personal command of the sovereign. The attempt was often made: it sometimes succeeded, but was never recognised. It continued, however, to be a debated case, down to the Revolution; and (strange to say) a little after. A scrupulous Chancellor here and there objected—as latterly those good Church of England Protestants, Bridgeman and even Guilford. A timid one got the King to seal himself: witness Langton's caution on Gaveston's appointment to the lieutenancy of Ireland by Edward II.; and the barefaced trick, by which Nottingham threw upon Charles II. the affix-

ing the Great Seal to the pardon of Lord Danby. In all other cases, the personal responsibility of the Keeper of the Great Seal was recognised from very early times.

In one most important feature, the Chancellors of France and England resembled each other to the last. Ministers of justice, they both exercised a general superintendence over the administration of the law. Edward I., while yet on his way from the Holy Land, in a letter dispatched to Walter de Merton, whom the Council had re-appointed Chancellor on account of having been his father's friend, addresses him as responsible for the justice of the realm. The spirit of the letter was a good omen for those substantial improvements in the internal government of the kingdom, which, in the eyes of a just posterity, are the real glories of his reign; much more than his ambitious conquests in Wales and Scotland. Before the end of his reign, Burnel, as his Chancellor, had to prosecute all the Judges, even his own Master of the Rolls, for taking bribes and altering the records; and he had the misfortune to convict all but two. Lord Campbell's notice of 'the execution of Tressilian, and the pun-'ishment of the other Common Law Judges, under Lord Chan-'cellor Arundel,' appears, upon the surface of it, to accredit the episcopal Chancellor with a greater share in those violent proceedings than the Appellant Barons would probably have indulged him with; even if he had not been disqualified by the canons. It was not until the succeeding reign that he dipped his clergy-hands in blood; and then, not in the blood of a Chief-Justice, but of unhappy Lollards. The sentences passed upon Tressilian and his accomplice Judges, was a warning, we daresay, to future Judges, to steer as clear as possible from affairs of state; and not to take out of the fire their roasted chestnuts for either feudal King or feudal Barons, whenever they could help it. But, supposing the advice which they had given their sovereign to have been as unconstitutional then as it would be now, (a hard supposition,) the lesson to be learned from the condemnation passed upon it, would be more constitutionally described to be 'a respect 'for the constitution,' than a 'respect to parliamentary privilege.' But, whatever was the character of the respect, it did not last long. In ten years' time the reaction came. The parliament of 21 R. II. annulled these passionate proceedings; and swore on the cross of Canterbury, that the answers at Nottingham for which these wicked Judges (11 R. II.) had been sentenced to death, or relegated to certain towns in Ireland, were just and legal! To be sure, the scene once more changed when the Lancastrian revolution triumphed.

Some hundreds of years have passed since Chancellors have had to exercise their penal powers in any higher flight, than the

removal of justices from the commission of the peace. In the tainted times of 'auricular confession' and the like, they were much more occupied in corrupting than in impeaching. Lord Keeper Coventry, driven on by Laud, had so thoroughly overdone this tampering with the Judges, by sending beforehand to them for their opinions, that Charles I. was obliged to interpose for their encouragement. He told them, 'he never would be 'offended with his Judges, so they dealt plainly with him, and did 'not answer him by oracles and riddles.' Much the most pleasant part of the Chancellor's supremacy over the law and its professors, must have been the opportunity afforded by it of favouring improvements and promoting merit. Looking at the law, not as a political engine, but as the application of the science of jurisprudence to the lives and properties of their fellow-citizens, they had to a certain degree the choosing both of measures and of men. For the larger measures of Consolidations or of Codes, there are brave words by Puckering under Elizabeth, and by Bacon under James. But we do not remember that there is any other instance, in Lord Campbell's volumes, of the subject being again alluded to. Particular measures, inscribed with the names of this or that Chancellor, appear also to be soon told. The earliest instance which Lord Campbell mentions is the Statute of Westminster the first, which, with all the rest of the parliamentary legislation of his long Chancellorship, he claims for Burnel. The Statute of Frauds comes last; of which Lord Nottingham has recorded, that 'it had its first rise with him; though receiving afterwards 'some improvements from the judges and civilians.' The Statute of Frauds (1677, A.D.) is a modification of the ordinance of Moulins, (1566 A.D.), as afterwards explained by that of 1667 A.D.: and so far it is a creditable adoption of the experience of other countries. But the admirers of Hale and of Sir Leoline Jenkins (if Jenkins has any) may let Nottingham have all the credit of such a prudent borrowing from our neighbours, and be no great losers in legislative fame. He is supposed to have admired his own handiwork so much, as to have declared that every line of it was worth a subsidy. The law may have had other legislative obligations to its Chancellors, during the wide space which separates Burnel from Nottingham. In case there are any, we are confident that Lord Campbell, who is most anxious to give full praise to all Chancellors, of all politics, will not have passed them over.

The direct patronage of the law will have been divided differently between the Prime Minister and the Chancellor, according to times and circumstances. There is a letter from Williams, while Lord Keeper, to Buckingham, returning him thanks, in the name of Westminster Hall, for having put Coke upon the Bench.

Clarendon, who was Prime Minister as well as Chancellor, had the gratification of appointing Hale, Vaughan, and Bridgeman. Lord Guilford made a stout but ineffectual resistance against promoting Serjeant Wright. It was one of a series of Jeffreys' insulting triumphs over a Chancellor who would not retire. Wright had to preside soon afterwards at the trial of the Seven Bishops,—a day of trial truly, for the Church of England; but one which did more towards nationalizing it in the nation's heart, than all other days since the accession of Elizabeth. The promotion of Wright (followed up, after the trial, by the removal of Holloway and Powell, justices) was the last experiment made in England, of Kings sitting down to play at law with their people, having first attempted to cog the dice. It was no encouragement to go on. At the present day, the Prime Minister advises the crown in the appointment of the Chiefs of the three Supreme Courts; the Chancellor in the appointment of the Puisnes; as reasonable a partition perhaps as any other of this branch of legal patronage. But otherwise, the form of distribution depends on no more intelligible principle than the spiritual distinction, by which the Archbishop of Canterbury writes himself Archbishop by Divine Providence; while the Bishops, (the *Puisnes* of the church,) are content with being simply, Bishops by Divine Permission.

On the breaking up of the *Aula Regis*, the Office of Chancellor became more completely separated than before. But, while the *Aula Regis* was yet existing in its primitive entirety, a specialty obtained, by which the Chancellor was strongly individualized, at least to us in retrospect, from all other members of the government. The specialty in question was nothing less than investing for a time the office, of which he was the chief, with legislative powers. The clerks of Chancery came in at first, as we have seen, as national scribes or royal notaries. They were soon summoned from the *res diplomatica* of their ordinary writs and patents, by a new demand upon their learning for services of a higher order. This took place in the following manner. One of the objects nearest the hearts of Kings, over all Europe, during the middle ages, was to bring the irregular and extravagant jurisdictions of Feudal Lords under subjection to the royal courts. With most of the said Kings another object, that of making suitors to the royal courts pay for the privilege of suing there, was so identified with the first as to be scarcely second to it. With this view, suitors to the King for justice were remitted by his Council to the Chancery; where their cases were examined, and writs supplied to them, according to the nature of their complaint. What they shut, was shut; what they opened, was opened. If the cases were proceeded in, it was on the authority of these writs. The

judges could not stir a step without them, or beyond them. All the judge-made law of later times, (the slow accretion of precedents—that is, of consequences deduced and moulded out of antecedents,) is a creeping and humble form of legislation, in comparison of the genuine legislation which these writ-framers directly exercised over the very seeds and principles of English law. Blackstone speaks of this, as being 'the chief judicial 'employment' of the Chancellor at the outset. But, unless we are very much misrepresenting the employment, it was strictly legislative; and differed from parliamentary legislation only, by being delegated and derived from it. Analogous, for instance, to the more limited legislative commission, not long since granted to the Judges over the practice and the pleadings of their courts.

By far the greatest change in the English law of which we have any notice, was, the transition from the system expressed in the Laws which go by the name of Henry the First, to the system contained in Glanville's treatise. Madox says, the difference between them is as great as between the laws of two different kingdoms. The period of the transition is fixed by internal evidence; and it must have been during the first five-and-twenty years of Henry the Second. It was coeval with a change in our judicial organization, only less important: the introduction of circuits—in which Chancellors occasionally took their part. There is not the slightest evidence to show that Becket, Henry the Second's first Chancellor, and a distinguished civilian, took the least interest in this extraordinary transformation of the Common Law. On the contrary, Lord Campbell, neither assenting nor dissenting, mentions the tradition, that these very laws of Henry the First had been restored by Becket. If his successors were occupied in throwing a bridge over this chasm, and by their devotion to their silent labours have earned from history the title of '*obscure* chancellors,' with which Lord Campbell is obliged reluctantly to dismiss them, it will be a singular illustration of the meaning and the worth of fame. Glanville was Grand Justiciar at this crisis; and is the only Grand Justiciar who has any claim on the memory of mankind. He first reduced the law to writing; and in the still more striking act of legislation which was now in progress, the clerks in Chancery were probably his really efficient coadjutors. His legislative materials, wherever and however got, must have been moulded into the shape of writs, before they could find their way into the courts. The same with regard to Bracton; who assuredly deserves the praise Lord Campbell renders to him. Our zealous biographer would have liked to find a latent Chancellor in him; but we must put up, we think, with the possibility of his being a clerk. Chancellor

or clerk, it is a national disgrace that there should not be a scholarlike edition of his book. The succeeding reign exhibits to us, in the Statute of Westminster the second, (13 Ed. I.,) our first parliamentary recognition of the Chancery employed in making laws. We have no candidate of our own to put in competition with Chancellor Burnel, for the legislative crown decreed him by Lord Campbell: with whom he is as great a favourite as he can possibly have been with King Edward himself. A statute affecting the whole body of the law, and depending upon his own officers for its execution, must have been an object of the highest interest to the Chancellor, whom our English Justinian retained as his Tribonian for so many years.

This statute authorizes the Chancery to proceed more boldly than it would appear to have been lately doing, in extending the rights and remedies of the Common Law. But, strange to say, the Chancellor himself is never mentioned in it. The authority in question is committed solely to his clerks. If they cannot agree, they are to apply to Parliament; where a writ was in that case to be framed by consent of the learned in the law. Burnel can scarcely have thought the subject-matter of his special enactments —English, Welsh, or Irish—which Lord Campbell has dignified with the name of Codes, of more importance than the laying down a sound foundation for the Common Law. Is it, that he foresaw his occupations, as a statesman, were not likely to allow of his taking a practical part in this kind of regularly recurring work? and that, as he had the fullest confidence in the ability of Kirby, his Vice-Chancellor, and the other clerks, he put, at once and openly, into their hands the responsibility and the power? Accordingly, the names of several of the clerks afterwards occur, as having been the authors of this writ or of that. Even in respect of the very process of the courts, it is no Chancellor, but Waltham, Master of the Rolls, who has got a questionable kind of immortality, as author of the *Subpœna*. It will not be long, we trust, before Sir Francis Palgrave performs his promise, and lets us see 'how effectually the king's clerks worked and laboured in the great 'task of establishing the law, and in directing the course of juris-'prudence.' They were a permanent body,—not carried away by the vanities and vexations of politics,—nor sent off on embassies,—nor absent with the sovereign in France, for months together. The same names are constantly recurring among them. We learn from Duck, that Noy had remarked to him, that the framers of the early writs must have been great masters of the Civil Law. In contradistinction to their chiefs, they had every opportunity, as well as inducement, to make themselves thoroughly masters of the Common Law also. No herculean labour this, at the time in question; if we remember not only its

actual bulk, but that they themselves are supposed to have been the principal parties concerned in getting it into shape. The 'Maister of the Chauncerie,' who came out in behalf of his decayed or decaying brotherhood, in the reign of Elizabeth, affirmed only the simple fact when he said: 'It seemeth that 'there is more skill and knowledge expected at their hands, 'than at the hands of the Magistrate himself. Accordingly, in our 'Chancery, you shall never find the Lord Chancellor's name 'subscribed to any writ or patent: Yet, notwithstanding, the 'whole power or commandment resteth in the Magistrate or 'Chancellor only.' Under these circumstances, he suggests, that it was as much for the Chancellor's own interest as that of the Masters, that the Chancellor should do for the Masters in Chancery, what Lord Burleigh, when Lord High Treasurer, had done for the Barons in the Exchequer—who were originally as much their inferiors as the Exchequer was inferior to the Chancery.

We now take leave of the Chancellors and their Clerks, as legislators through the instrumentality of writs. The legislative authority, so plenarily committed to them, was soon to die away, or at least to subside into the judicial form. Chancery, which we have hitherto seen only a Writ Office, or *Officina Brevium*, was about to be enlarged into a Court of Justice. The Chancellor had been raised into a Lawgiver, without its having attracted any notice. He was made a Judge; and the innovation was among the master grievances against which the House of Commons in vain addressed itself by petition, during many successive reigns.—A striking instance this, of what has been often observed, that half-civilized communities are much more sensibly affected by the administration of laws, than by the making of them. This innovation was very remarkable, if not in its origin at least in its results. The only sort of justice which was to be got in the Courts of Common Law, fell short of the exigencies of society. Who were to blame for this, or rather in what proportions the blame ought to be distributed, it is now impossible to say. If the remedies at Common Law were narrow and severe, they might, one would think, have been enlarged and softened. Suppose Common Law Judges, from ignorance or jealousy, either to have made them still more narrow by technical obstructions, or to have perverted the remedy into poison, under the sordid influences of fear or favour; yet these obstacles to the efficient administration of justice in the ordinary courts, might surely have been removed in some more Statesmanlike and legal way. There could be no absolute necessity for submitting the parties to the arbitrary discretion of an independent jurisdiction, proceeding (as far as it had any rule or model) on the unpopular models of the civil and

canon laws. Such, however, was the line adopted. Lambard prefaces his notice of this movement by a statement, which in fact amounts to saying, that the council did on this occasion, with a portion of its judicial power, what, as we have seen above, it had done before with a portion of its legislative. After observing that Edward I., being assisted by the Chancellor, did himself mitigate the severity of the law in his own person, or referred it to the Chancellor alone, or to him and some other of the Council; he adds, that 'whenever the court of equity took beginning to be 'a *distinct* court, he had made proof that the *power thereof was* 'always in exercise.' Coke might not believe Lambard; but he could not have refused giving in his slow adhesion to the evidence of the Rolls themselves, under publication by Mr Hardy. He might have read there, with his own eyes, petitions for redress in cases of this description, referred to the Chancellor in Chancery, from the very beginning of the reign of Edward I.

In addition to the Courts of Common Law, two new courts were now formed from the Council, (as it were, ribs taken from out of its side)—the Courts of Chancery and Star-Chamber. The Court of Requests need not here be noticed: nor the multifarious business, lying beyond the learning of the Common Law, of which the Chancellor was frequently put in charge. The two new courts, of which we are now speaking, were the *Curiæ Prætoriæ et Censoriæ* of Bacon. In both of these the Chancellor occupied the highest place. Compared with the other members of Council, the presumption of competence must usually have been greatly in his favour. They continued, from the nature of its business, to be his active colleagues in the Star-Chamber. But they gradually left him alone in Chancery—with his own proper staff, or with such help as the judges might afford him on occasion. Allowing for a few statutory exceptions, Chancery settled down into a pure Prætorian court. In this character, it was its distinct province to afford to private parties, in certain cases, a more complete justice under the name of Equity, than they could obtain from the other courts of Westminster under the name of Law. A jurisdiction, starting with these pretensions, and being the very opposite of the Common Law in its principle and forms, could not grow up beside it without many heart-burnings and contests. It would stand in need of every support, from without and from within. The political importance of its chiefs, and the learning of its assessor clerks, might not, however, have been sufficient, had not there been a deep and prevalent conviction in the body of the People, though not perhaps among Feudal Lords, that, whatever might be the evils of such an institution, yet, in the only choice before them, these evils were the least.

Our readers will remember More's celebrated Dialogue with the remonstrant Judges. They will remember, too, that he was a Common Lawyer bred and born. His own father then was upon the Bench. For the best part of his life he had been a Common Law Judge himself, presiding in the Sheriff of London's court; a post which, with his own good-will, he would have never left. His defence of his injunctions is not less striking than his picture of jury trial, as he does it by way of answer to the attacks of Barnes and Tyndall upon the Ecclesiastical Courts. If More is to be believed, we must admit that, as late as Henry the Eighth, the crying evils in society, against which the Chancellor had originally been called in, still warranted the interposition of a dictatorial hand. Soon afterwards, judges and juries got sufficient strength to stand tolerably upright, where private parties only were concerned. But, the grounds on which equity jurisdiction had been originally introduced, were not so much (at least not avowedly) defects in the Tribunals, as deficiencies in the Law. The deficiencies in the law were still there. Men were beginning, indeed, to question whether their ancestors, in looking for a remedy, had gone in the right direction. But the wisdom of ancestors is not got rid of in a day.

St Germain, contemporary with More, (and in controversy also with him, upon even nicer questions,) appears to have been looking a little forward. In distinguishing between three kinds of conscience—the conscience of Morals—conscience under the *Subpœna*—and the conscience of Courts of Law—he shadowed forth the emerging lines which one day might make a system. The fact of there being unconscientious cases, against which no relief was to be had in Courts of Equity any more than in Courts of Law, is fully admitted. Of this, in St Germain's eyes, the Common Law fiction of 'Common Recoveries' was an irrefragable instance. Chancellors, he thought, had been strangely wanting in their duty, when they had allowed this burden upon conscience to be brought in. But Recoveries must now be suffered, for the hardness of the hearts of Englishmen! and because, 'haply from their great multitude,' to compel restitution would be the subversion of too many inheritances in the realm. These boundary lines and admissions are certainly significant; nevertheless, they were too slight and faint to keep back the demand for discretionary relief. There passed, at least, a century and a half before the double aspect with which conscience under the *Subpœna* looked askance first at morals, and then at law, was laid aside, and the system made.

Selden's saying, that the measure of Equity was the length of the Chancellor's foot, may be received as having been substantially a faithful representation of the practice of the Court

of Chancery, in the reign of Charles the First. The most intelligent lawyers of the time said the same thing, again and again, in graver language. However, very little progress had been made towards getting rid of this latitudinarian discretion, until the father of modern Equity arose.

It is plain, that there cannot be a possibility of a System until the force of precedents is acknowledged. And yet, as late as 1670, when the three Chiefs were sitting with Lord Keeper Bridgeman, the question must be considered open. Chief-Justice Vaughan was by far the ablest of them all. He was the executor of Selden and friend of Hale, and—what is still greater praise—the Judge who, in deciding Bushel's case, (against the almost unanimous opinions of the other Judges, as expressed in Wagstaff's case,) did infinitely more for Trial by Jury, than any number of Erskines could have ever possibly accomplished at the Bar. Sitting in Chancery, he could not conceal his astonishment at his brother Kelyng's seeking to help them to an opinion by means of precedents. Upon this point, we are only using Vaughan as a witness, to show what must have been hitherto the ordinary practice of the court, when such a person could so express himself. 'I wonder to hear '(says Vaughan) of citing precedents in matter of equity. For 'if there be equity in a case, that equity is an universal truth; 'and there can be no precedent in it. So that in any precedent 'that can be produced, if it be the same with this case, the rea-'son and equity is the same in itself. And if the precedent be 'not the same case with this, it is not to be cited, being not to 'that purpose.' This is exactly the line taken concerning precedents fifty years before, by Norburie, a Clerk in Chancery, in a very curious letter addressed by him to Lord Keeper Williams, on 'the abuses and remedies' of the Court. There is more to be learned from it, than any where else, of Ellesmere and Bacon in their Court. His hero is Sir Edward Phillips. Two things he considered necessary to be known: first—the Rules and Orders of the Court: next—so much of the Common Law as will enable the Chancellor to see, upon what supposed strain or defect therein, any given case is brought into Chancery. That the cases which were retained in Chancery for adjudication there, should ever become the subject of a science, never entered into the dreams of Mr Norburie.

The change which we are now anticipating in the nature of the jurisdiction of the Court of Chancery, was a thorough change; a change of principle. It was put off and off, until we are nearly at the close of the present portion of Lord Campbell's biographies. Supposing, therefore, Lord Campbell to have been disposed to show us his Chancellors at their judicial work, and that we had

been disposed to profit by their instructions, the learning we should hitherto have encountered would not have come of any very abstruse and scientific stock. The learning which has displaced it, is a very different affair; and would be almost as new, we suspect, to Ellesmere and Williams, as to Parnynge and to More. It is a pity only, that the word *Equity* should have been retained. It looks too much like satire. But this we must not mind. The advantages from the change of system are so indisputable, that he must be pragmatical indeed, who, in such a case, would have the heart to quarrel with that ancient name.

The Court of Chancery, in its original form, was a large experiment for ascertaining, how much of the jurisprudence of a country could be administered on principles of conscience and discretion. It was tried under favourable circumstances; being at its commencement tried in opposition to a cramped system of imperfect law, and against tribunals low in public confidence. It was persevered in for centuries. For a time, the balance of advantages and disadvantages was probably on its side. But, as the country settled, and as courts of law improved, the balance turned against it. How completely the balance turned, is made good by the testimony of every witness whose opinion is worth having, except Lord Bacon. Bacon's Aphorism in favour of *Curiæ Prætoriæ et Censoriæ*, cannot, we apprehend, receive any other construction, than what must make him an exception. The attempt to get better bread than can be made of wheat, was given upat last. It was given up, too, with a concurrence almost as universal as what had brought down the Star-Chamber only a few years before, nearly crushing under its ruins those that sat there. At present, now and then a few hasty law-reformers of the Cromwellian school may be heard talking about the abolition of the Court of Chancery. Yet, all who know what they are talking about, would as soon speculate on the restoration of a court of Criminal Equity in the detested Star-Chamber, as on the revival of a court of Civil Equity in the ancient Chancery of the Plantagenets and the Tudors.

Our great object in these observations has been, to give lay readers a general idea what Lord Campbell's Chancellors will have been doing when they were on duty—what were their proper employments, whether ministerial, legislative, or judicial; under what responsibility they acted;—especially, what part of their business it was which they were obliged to do themselves in their own persons—and what (after the well-approved English fashion in all public offices) they were only supposed to do, by the most generous of fictions. The two main elements, the political and the legal, were mixed up in very different proportions

at different periods, as well as in different persons. On laying down those most interesting Lives, the reader, who is so minded, may apply our lesson. He will do this, by making out for himself his list of Chancellors; classing them according to his impression of all that they have severally done for the use and honour of the law. He may afterwards class them after their other merits—whether as divines or statesmen, as courtiers or demagogues, or merely men of noble birth. Hatton, we presume, was the best dancer. Sir Thomas Beaufort the greatest captain; and perhaps, as soldiers and sailors are wont to be, the frankest man. He was Henry the Fourth's half brother—a great leader, not at Nisi Prius, but at Agincourt; being Shakspeare's Duke of Exeter. On delivering over the Seals, when Chancellor, to his Master of the Rolls, he blurted out the truth; and declared, that he was so taken up with other business, that he had no time for Sealing. (*Quod circa alia negotia adeo occupatus erat, ut sigillationi vacare non posset.*) Political Chancellors have not always been so honest.

Lord Campbell begins at the beginning. He, accordingly, sets out in the dark; for the opening of the seventh century cannot be called dawn. It is some time before we can see any thing: still longer (antiquarians must forgive us) before there is much to see. Lord Campbell must be of this opinion too; since, having a term of something more than a thousand years at present at his disposal, he has distributed them in the following proportions. He gives nine hundred years to the first volume; one hundred to the second; and thirty to the third. The distribution is one which nobody will disturb.

The first volume dispatches, together with nine hundred years and upwards, more Chancellors than we have had the patience to count up. It begins with the first christening of a Saxon King; and stops at the Reformation. Perhaps, it is its most distinctive feature, that it comprises the reign of ecclesiastical Chancellors in England. The outlying cases of Gardyner and Heath were exceptions; personal to the character and circumstances of Mary. The case of Williams, the Protestant Bishop whom James the First made Keeper, was a mere accident that happened out of its time. That the time was past is plain enough, both from the complaint by Bodin, that France and England had made Chancellors of ecclesiastics too constantly and too long; and from the fact, that ecclesiastical Chancellors were, at this time, given up in France as well as in England. Becket and Wolsey were, in themselves and in their actions, memorable men. They were both true representatives of the Roman Church in England, one of its rise, the other of its fall—both, men of questionable character and ambition—both, ministers brought down

from a height of royal favour, such as is seldom enjoyed by men of their capacity, to disgrace and death. Sir Thomas More might be added to them, as being half a churchman. Had it not been for the celibacy imposed upon the clergy, he would certainly have been a whole one. Of all the Chancellors whom we meet with in the first volume, these are the only three who can be reasonably said to belong to history. Yet, the impress of their powers, and the whole of our interest in their story, are to be looked for any where rather than in the law. Their public life is incorporated in the general politics of their times, more especially in the religious politics.

The twenty-fifth statute of Edward the Third has been called the *Magna Charta* of Treason. It appears to have had no nobler origin than a squabble about forfeitures between the King and his Barons. Lord Campbell ordinarily claims all legislative improvements for which there appears no other owner, as a waif belonging to the Chancellor for the time being, in his character of Lord of the Manor. He does not venture, however, upon giving John de Thoresby more of the credit of this famous statute, than mere concurrence. Among the din of arms, the victor of Crecy and of Poitiers had two peaceable Chancellors, whom English scholars ought not to forget: Richard de Bury, the King's tutor, an earlier book-collector than Humphrey, Duke of Gloucester; and William of Wickham, the architect of Windsor, and founder of Winchester and New College. Again, improvers as they were, we must not think of looking into the statute-book for their merits.

In his *Philobiblon* (whether written by himself, or, as Warton surmises—Lord Campbell thinks without any reason—by Holcot, a monk) Bury has so far overlooked his Chancellorship, as to record his preference of books on the liberal arts to treatises on law. A library of those times is a strange retrospect. The 'fables of the poets' are apologised for; and the Greek part of the collection consisted of a Greek grammar! Being only an eight months' Chancellor, (for that seems to have been his term of office,) he may perhaps be pardoned for his indifference to the infant literature of the common law. The year-books, which Serjeant Maynard is said to have loved so much as to have taken them about with him in his carriage, had come into existence only in the preceding reign. At that time, therefore, they would make only a thin pamphlet, and be much too modern to be admitted upon the shelves of a genuine collector. He condescends, however, to mention his *panfletos exiguos*. A hundred years earlier, both the civil and canon law make a great figure in the catalogue of the Peterborough Library. A civilian himself, Bury must have made an exception in favour of the civil

lawyers, and especially of the *Rubrics* of Vacarius, once so celebrated throughout the English schools of civil law. In case the history of these schools should ever become an object of curiosity, the *Magister Vacarius, primus Juris Romani in Angliâ Professor*, will be once again in honour. A German scholar of the name of Wenck, having discovered a copy of these rubrics, has recently endeavoured to draw attention to him: we fear, in vain. The two laws, civil and canon, were for a long time sedulously cultivated in the English Universities. Witness the prodigious number of Fellowships set apart for them. They had their worldly reward, too, in Embassies, in the Ecclesiastical Courts—above all, in the large establishment connected with the Chancery. Ecclesiastical Chancellors were naturally very sensible to the *jejuneness* and the barbarisms of the Common Law. Wolsey's mutterings against them are recorded. When they bitterly complained, that the circle in which civilians were employed was daily narrowing, they might have a prudent prescience of a still deeper change. We have the testimony of Sir Thomas Ridley, that, down to the reign of James the First, the Masters of Chancery were nursed in the bosom of the Civil Law. 'It was providently done by the princes of former ages 'to join with these great personages, men furnished with 'knowledge in these cases of conscience, wherein, if they should 'at any time stick, they might be advised by them that are 'assessors with them;' that was, by the Masters, whom Ridley assumes to be civilians, and to be diligent students of 'the titles 'of Equity in the Civil Law.'

Wickham had probably but a small stock of school learning. The testimony of the Pope, by an unusual clause 'to his knowledge of letters,' raises the suspicions it was meant to lay. A book which Stowe speaks of by a Dr Martin, in vindication of Wickham's learning, tells the same way. The learning of Shakspeare was a curious question, and worth enquiring into. Hardly so, how far Wickham may have been one of those self-taught men, who get on in the world by mother wit, with very little of what was formerly called *Clergy*. Rating him at the lowest, he could scarcely, however, have been as ignorant of his mother tongue as Lord Campbell imagines. His motto, 'Manners makyth man,' was also Bishop Ken's. *Makyth* was the good old English plural. Lord Campbell makes merry with the story of his supposed translation into Latin of his supposed inscription over one of the gates at Windsor. 'This made Wichem.' Bishop Lowth observes, in his life of Wickham, that he could find no older authority for the story, than the gossip of Archbishop Parker. Whatever might be Wickham's want of learning, he nobly redeemed it by the example which he

set to an illiterate nobility, of supplying the want of it in others. He was a moderate and prudent Prelate; and yet had the manliness, in difficult times, to take a true and decided part. That a Bishop of Winchester should have been a favourer of Wickliffe, is more than we have any right to expect. We must be prepared, therefore, for the clerical tribune of Lutterworth taking his revenge, and taunting the Lords, that they promoted 'only kitchen clerks and men wise in building castles.' Lowth supposes, that fidelity to his benefactor—shown toward three generations, all alike helpless, from age, or disease, or childhood—may be taken to be the key to all we know of Wickham's politics. There was the imbecile old age of the strangely neglected Lion of Crecy and of Poitiers; the wasting away of his heroic son; and the tender years of his ill-fated grandchild—a boy capable apparently of better things, had he only fallen afterwards into prudent hands. Wickham was so active an Anti-Lancastrian, that the statute of *Scandalum Magnatum* has been supposed to have been passed by way of protection to John of Gaunt, against the rumours which he circulated or encouraged. On a fuller consideration of the view which Lowth has taken of Wickham's character, and of the family divisions in which the reign of Edward III. closed so miserably, and that of Richard II. began so ominously, perhaps Lord Campbell may see reason for forming a more favourable judgment of Wickham's political conduct, than he has drawn from first appearances.

Civilization and a settled government have increased prodigiously the comfort of private life; but public men are still greater gainers from the change. They need not now keep office to keep their liberty or fortunes, perhaps their heads. The Chancellors of the middle ages stood too near the throne, to have—we do not say a quiet time of it, but—any abiding sense of personal security, except as ecclesiastics. They were between two fires—the King on one side, the Barons on the other. Besides, from the Conqueror to Elizabeth, they could never calculate, for ten years together, on not being compromised by the feuds which convulsed the royal family itself at every descent. These family suspicions and intrigues were far more Asiatic than European. It was a rash challenge which Shakspeare ventured on—'Not Amurath an Amurath succeeds; but Harry, Harry.' The contrary feeling was so strong all over Europe, that Pasquier has set apart a chapter for exemplifying, from English history, the train of judgments with which God visits the impiety of children. He speaks of the royal race of England as of a doomed house, like that of Atreus on the Grecian stage: and he puts down the domestic troubles, which pursued them from generation to generation, to the personal rencontre in the

field of battle between the Conqueror and his son, Duke Robert. By their position, the Chancellors could not possibly help being parties in these most unnatural contentions. The long-continued tragedy opens with Flambard, Chancellor to Rufus, urging on the half-parricidal Robert, on his return from Umbria, to contend for the crown with his brother Henry; and it closes only with the Chancellors of Elizabeth and James taking order for the trial of Mary Queen of Scots, and the imprisonment of the Lady Arabella Stuart!

Under Lord Campbell's first division, among all the figures who have passed before us, there is only one upon whose character, as a character, we have a wish to dwell. The exception, of course, is Sir Thomas More. With regard to the others, and indeed with regard to almost all who are to follow them, the skill of their biographer cannot keep down the feeling, that their lives are either commonplace, instructive, or entertaining, as the case may be: But that, as to their true selves, we either do not get sufficiently intimate with them to know them, or that, in fact, there was nothing very original about them—nothing really characteristic. Over one, over Francis Bacon, we sit down and mourn! For the rest, they may raise sometimes our respect, sometimes our curiosity; nothing higher or beyond.

One of the marvels in More was his infinite variety. He could write epigrams in a hair shirt at the Carthusian convent; and pass from translating Lucian to lecturing on Augustin in the Church of St Lawrence. Devout almost to superstition, he was light-hearted almost to buffoonery. One hour we see him encouraging Erasmus in his love of Greek and the new learning, or charming with his ready wit the supper-tables of the court, or turning a debate in Parliament. The next, at home, surrounded by friends and familiar servants, by wife and children, and children's children, dwelling among them in an atmosphere of love and music, prayers and irony—throwing the rein, as it were, on the neck of his most careless fancies, and condescending to follow out the humours of his monkey and his fool. His fortune was almost as various. From his utter indifference to show and money, he must have been a strange successor to Wolsey. He had thought as little about fame as Shakspeare; yet, in the next generation, it was an honour to an Englishman throughout Europe to be the countryman of More.

Nature had made him all things to all men; in the only way that the experiment can ever prosper—by giving him a part of what was best out of every disposition. And so he was an universal favourite. His simplicity and frankness set a window in his bosom. Men saw in, and at once reconciled in his favour contradictions, such as would have been the ruin of less open natures; but for which, in his case, they only loved and trusted him

the more. Austerity, purity, and festive levity—the self-denial of the monk, the facility of the courtier, the tenderness of the goodman of the house—were virtues which he was clothed with as with a garment, the many-coloured vesture that he daily wore: to put off which would have been to put aside himself. In him the lion and the lamb lay down together. Righteousness and peace met upon his threshold, and kissed each other.

It has been conjectured that an angel, coming among us, could take interest in nothing. More was wiser than this abstracted angel of the philosophers. He was not only human both in head and heart, but eminently practical. He grew kindly towards every thing he touched, almost entwining himself around it. He made all kinds of interest equally welcome and familiar. The height from which he had looked on life, only served as a proper distance that he so might judge more truly of its realities; and blend into a softer harmony the chafings of the surge below.

More did not wait; and throw the different periods of his life into contrast with each other, as ardent natures are apt to do. No sudden conversion, like that of Becket from ostentatious vanities into Trappism; nor those by which the greatest saints are made out of the greatest sinners. He brought the opposite elements at once into presence: controlling and combining them with a light hand, but a decided will. He had learned what life is made of, without the necessity of going out with Lear into the storm to learn it. The extremes of circumstance and condition, which seem to stand as far asunder as the heavens are from the earth, were in his eyes but the accidents of things; and, except they could approve themselves to be means of happiness or of duty, were hardly worth the trouble of a choice. The earnestness of this exception saved him, not only from the neutrality of the Epicurean Angel we were just mentioning, but from a temptation, to which, by his own disposition, he was more exposed—the temptation of standing with Democritus * in the market-place, the laughing spectator of a masquerade. This exception might bring all things to a level, or tend to do so; but it was only by including all, and from that natural equality which is in all things except the mind. 'The mind is its own place, and of itself can make'—whatsoever life is capable of being made.

There is a kind of wit as sparkling as the diamond, and as hard: Humorists by profession often finish by making merely a mock of life. Not so More. He had a jest, it is true, wherewith to turn the sharpness of the headsman's axe, or to parry his

* Soles hujus generis jocis impendio delectari, et omnino, in communi mortalium vitâ, *Democritum* quendam agere.—Erasmus's *Letter to More, with his Moriæ Encomium.*

wife's impatient tongue. (By the by, we must do Mrs Alice Middleton the justice to allow, that, to a managing or aspiring wife, he must have been a most provoking husband.) But the serious part of his nature was a security that he would be sure to be in earnest, when to be in earnest could be of any use. He was no idle wit about town. He had worked hard and long at the world's work; at the toughest part of it, in which men put out their strength. His father, in the first instance, had made him a lawyer—as the King afterwards forced him to court, and made a Statesman of him—in both cases against his will. Erasmus testifies to his friendship having been the friendship of all friendships—the salient overflowing of his abounding heart. These would probably have proved securities enough against being carried down the stream with the jesting Pilates. But there was a security behind, greater still. His confidence in the dignity, after death, with which Religion has invested man.

More was in his lifetime reputed witty, in the ancient sense of wise. His wisdom, however, was at fault on some great occasions, public and private. His two marriages were equally unworthy of him. By the most rational account of them, they belong to the leaden age of the profession,—when lawyers, it is said, employed their clerks to choose their wives. But there are happy natures which cannot be made unhappy; and, as More's Socratic tranquillity stood the test of Alice Middleton, we can believe in all that is reported of his happiness with Jane Colt. We recommend our friends, however, rather to trust to his verses—*qualis uxor deligenda*—than to his example. He paid dearer for his other folly,—that of allowing himself to be made Chancellor while the King's divorce was yet unsettled. It imposed on him the painful necessity of being chairman to the committee, where the frivolous charges against Wolsey were prepared. All the worse because Wolsey, having feared him always more than loved him, had yet told the King that he was the only proper person to succeed him. We do not believe that More spoke both the speech at his installation, where he is made to compare himself, coming after Wolsey, to 'the lighting of a candle when the 'sun is down;' and also the speech, a few days afterwards, at the opening of Parliament, where he calls Wolsey 'the great wether, 'lately fallen, who had juggled with the king, so craftily, scab-'bedly, and untruly!' Lord Campbell, we are afraid, is right in thinking that the first of these speeches is the one which he did not speak. To be sure, one of his epigrams is addressed to Wolsey, the contradiction of which is quite as great. It was sent together with a copy of Erasmus's New Testament; and Wolsey is described in it, not only as the generous patron of men of letters, but as a perfect Christian and perfect judge! We had rather, that More should not have had to plead the

privilege of a poet. But what was more purely and personally rash in him, was the dilemma, the inextricable dilemma, in which he now involved himself respecting the divorce. Four years before, he had evaded the question put to him by the King; and had referred him to divines. During the interval he had observed a prudent silence; so much so, that both parties are said to have reckoned upon his support. Within a few months of his appointment, he gave way a little. We find him submitting to subscribe a letter to Pope Clement in the name of the nation, complaining of his partiality, and threatening to apply the remedy without his interference. Nearly two years afterwards, (a few weeks only before his resignation,) he went down to the House of Commons with the box of foreign opinions, which declared the marriage void. Upon the authority of these opinions, he desired all 'of the Common House to report in 'their counties, that the King had not attempted this matter of 'will or pleasure; but only for the discharge of his conscience, 'and the security of the succession of his realm.' After this faint-heartedness, no wonder he welcomed his fortitude on the question of the supremacy with the joyful exclamation, (which the weaker Cranmer might afterwards have re-echoed after worse misgivings,) 'I thank God, the field is won!' More's zeal against the Reformation was now rising. We hope that he may not have been considering it a solemn duty to accept an office, where, according to his own account of their position to his son Roper, 'we sit high upon the mountains, treading heretics 'under our feet like ants.' Erasmus had foreseen the danger; and had grieved, therefore, at his friend's promotion. Under these feelings he congratulated him on his resignation, and trusted that he had now escaped.

More's personal religion had been marked by so much enthusiasm and singularity from his youth upwards, that we would have rather trusted his judgment, and even his temper, on any other subject. He carried the cross himself in the religious processions of the parish; and while he was Chancellor, the Duke of Norfolk, coming to dine with him at Chelsea, found him at church with a surplice on his back, singing among the choristers! When the Reformation, 'with the ungracious heresy against the 'blessed sacrament of the altar,' &c., appealed from the priesthood to the people, and with confidence and insults presumed to desecrate the most reverent feelings and habits of his life, the outrage on the very sanctuary of his nature was more than he could bear. His animosity to the Reformers has been half excused on the supposition that it was principally political, and was grounded upon apprehensions for the public peace. This

was true of the timid Erasmus; who had no turn for enthusiasm or martyrdom. Not so More. Quite the contrary. The degree in which his animosity can be fairly called political, is only an aggravation of the bigotry which made it so; for it made him first believe, that no one could connect himself with these new sects of error, (especially after reading his answers to their books,) without having beforehand determined to be bad! (*Sed isti generi hominum quibus malos esse libido est, nullâ ratione satisfeceris.*) This to be said of the good men, then alive, of whom this world was not worthy! In the epitaph which he drew up for himself, immediately after resigning, he acknowledges by the gentle word *molestus*, that he had made himself *disagreeable* 'to thieves, murderers, and heretics.' Writing to Erasmus, he repeats this avowal, justifies it, and glories in it. *Quod in epitaphio profiteor, hereticis me molestum fuisse, ambitiosè fecit.* For, he adds, he so hated that race of men, that he was desirous of being thoroughly hated by them in return; his experience of them satisfying him every day more and more, how much there was to fear from them for the world. The nature of these fears, as elsewhere stated to his son, came very much to this,—the probability, that the day might come when he would gladly wish to be at league and composition with them; for those of the old religion to let the heretics have their churches, so that the heretics would be contented to let those of the old religion have also theirs.

Of course, we accept at once More's own account of the extent of the severities by which he laboured the suppression of heretics. If a man of his sweetness and moderation can have thought nothing of the severities he owns to, the more the pity. It is clear to us from his own language, that he did not shrink from the responsibility of putting heretics into bonds; and that he would not have sought shelter under the pretext, that to imprison them was a legal obligation, from which he could not escape. The letter, in which Erasmus first notices the report of More's removal from the Chancellorship, mentions that his successor was said to have immediately set at liberty the prisoners whom More had put in confinement for differences of faith, (*protinus liberos dimiserit quos Morus ob contentiosa dogmata conjecerat in vincula.*) More openly rejoiced at the deaths of Zwingle and Œcolampada. The very best of the Reformers, it is true, were either the doers or the advocates of much worse things. Peter Martyr adjured all magistrates to take up the persecuting sword, as one of their most solemn duties. Bullinger applauded Calvin for murdering Servetus by the hands of the Senate of Geneva, both before and after that savage deed. Nor was the voice of the gentle Melanc-

thon wanting to this chorus—cry for blood. *Affirmo etiam vestros magistratus juste fecisse, quòd hominem blasphemum, re ordine judicatâ, interfecerunt.* Nearly a hundred years afterwards, Ellesmere, indifferent enough himself, gave his official sanction to the burning of two Arians, Legate and Wightman, in honour of the polemics of King James. Later still: the Commonwealth Parliament had to thank Whitelock for saving it from the infamy of having put to death Naylor, the Quaker. These men knew not what they did. They had never thought of toleration but as a sin. It was More's distinction, that he had seen a light which was hid from others, and had held it up as a beacon to the world. How came the light in him—the light of reason and of mercy—to go out?

More had only a short time—two years and a half—in which to terrify heretics, as Chancellor. Comparing the principles of toleration on which he professed to govern his Utopia, with those on which he afterwards governed England, it is difficult to believe, that, in his character of philosopher, he had really changed at *fifty*, the opinions which he had deliberately formed and published at *thirty-six*. It is equally difficult to believe, that any thing had occurred in the conduct of the reformers at home, or even abroad, between 1516 and 1529, (the dates in question,) by which More could justify, in his character of statesman, a different method of proceeding with regard to religious differences at the two periods. The passage in the *Utopia* is too just and too remarkable, not to be set out at length on this occasion. A sentence or two from Erasmus's account of More's *Utopia*, written two years after its publication, will be sufficient to establish that it was intended, at the time, by its author, for a more practical purpose than a philosophical romance. 'More published his *Utopia* with 'this object, (says Erasmus,) to show how commonwealths 'might be better managed. But he had England principally 'in his eye, which he knows thoroughly.'—(*Letter to Hutten.*) Let us see, therefore, what was the counsel which More tendered to his countrymen in 1516. We wonder whether, in 1530, he ever thought of it; and in what way (we have no doubt an honest one) he reconciled to himself this, the most painful of all the contradictions of his many-sided life. The following passage contains the substance of More's legislative creed, in nearly his very words:—'The founder of the commonwealth of Utopia 'enacted, that every man might be of what religion he pleased, and 'that whosoever should use any other force but that of persuasion 'against the opinions of others, was condemned to banish-'ment or slavery. This law was made, not only for preserving 'the public peace, but because he thought the interest of

'religion itself required it. He seemed to doubt whether 'those different forms of religion might not all come from 'God, who might inspire men differently, he being possibly 'pleased with a variety in it; and so he thought it was a very 'indecent and foolish thing for any man to frighten and threaten 'other men to believe any thing, because it seemed true to him. 'There were, accordingly, many different forms of religion among 'them, which, however, agreed so entirely in the main point, (wor-'shipping the Divine essence,) that while every sect performed 'the rites which were peculiar to it in their private houses, there 'was nothing to be seen or heard in their temples in which the 'several persuasions might not agree. They offer up there, both 'priests and people, very solemn prayers, in which they acknow-'ledge God to be the author and governor of the world. And, 'in particular, they bless Him for his goodness in ordering it so, 'that they are born under a government which is the happiest in 'the world, and are of a religion that they hope is the truest of 'all others. But if they are mistaken, and if there is either a 'better government or a religion more acceptable to God, they 'implore his goodness to let them know it, vowing that they 'resolve to follow Him whithersoever he leads them. But if 'their government is the best, and their religion the truest, then 'they pray that He may fortify them in it, and bring all the 'world both to the same rules of life, and to the same opinions 'concerning Himself, unless, according to the unsearchableness 'of his mind, He is pleased with a variety of religions.' *

We wish that our readers, before they pass on from the character of More, might be persuaded to turn to a most beautiful application of it: We mean the wise and affecting words with which Sir James Mackintosh has concluded his Life of More—one of the most charming pieces of biography in any language. We have only one thing further to request of them. When they come to Lord Campbell's life of Stephen Gardyner, we would have them remember, that for the present purpose he may be considered as contemporary with More. If, on the one hand, there is more (much more) to be set against Gardyner out of Fox's *Martyrs* than against More; yet, on the other hand, Gardyner had a deep injury to resent—the injury of his own cruel imprisonment—while More had none. More, also, had once known better. Gardyner was probably no wiser than his age. There is one other distinction. We know at present of no such interpositions by More on behalf of heretics, as are commemorated

* Bishop Burnet's *Translation of More's Utopia.*

of Gardyner both by Harrington and Ascham. It is good for the austere man's acts of mercy to be followed by their reward. The Protestant schoolmaster of Jane Grey and of Elizabeth was protected by the Popish Chancellor of Mary; and the grateful testimony of Ascham in memory of his protector, who in days of danger had guarded 'the Muses' Bower,' is recorded in a spirit which Milton would not have disdained.

Lord Campbell's second volume carries us from the Reformation to the civil wars; from our first effectual movement towards Religious Liberty—in which we had much encouragement from abroad—towards the first free development of the English Constitution, where we had every thing to do at home. In the first of these movements the nation had no assistance from its Ecclesiastical Chancellors. Its Civilian Chancellors were not of much more service to it in the second. There is not the name of a Chancellor among the signatures to *Magna Charta*. The cause of this continued to the end.

The period now in hand embraces only a hundred years, and some twenty Chancellors. Yet what a pregnant and momentous period! It brings us in immediate contact with causes and effects; and with grave historic names, with all of which we are, more or less, familiar. There are Gardyner, Bromley, and Hatton; Ellesmere, Williams, and Coventry. A fourth of the space is occupied by one family—father and son. The prudent Nicholas Bacon, Keeper to Queen Elizabeth, (a Queen, wise and heroic, notwithstanding all her transgressions and failings,) sat in the judgment-seat of Chancery upwards of twenty years. Four short years were all too long for his imprudent, unheroic, yet immortal son! We have room to speak only of that son; and only of his faults. Since, for his genius, and for the glory of it, the world is not large enough to contain them.

> 'A fairer person lost not heaven: he seem'd
> For dignity composed and high exploits . . .
> His tongue dropt manna.'

Clarendon and Bacon have both left us a comparison between a contemplative and active life. Men born *rebus agendis*, full of outward movement, have seldom time to raise these questions unless in intervals of compulsory retirement. But to men born for contemplation, the comparison is constantly recurring. To nobody oftener than to Bacon; and nobody was more conscious that he had chosen wrong. It was an evil day for him when, on his being taken as a marvellous child to Queen Elizabeth, she called him, in compliment to his father, (one of those compliments by which she paid all services, and yet won all men to her service,) her young

Lord Keeper. We never think of these ill-omened words but as of a spell uttered over him by a perverse fairy, who, in uttering them, had read backwards the natural history of his life—had poured in at his dreamy ear the fumes of a poor ambition—and beckoned him on, by the delusive seals floating in the perspective, into the way he certainly should *not* have gone. He was painfully aware that it would have been well for himself, and for mankind, if he had never exchanged the Court of Trinity for that of Greenwich. He was dedicated by nature a High Priest of knowledge, human and divine; and he turned himself into a Crown Lawyer! She designed him for the rival of Aristotle, not Coke—not to be directing the torture of wretched suspected traitors, but to interrogate herself on the kindly rack of wise Experiments. The noble task even of historian or legislator for England was below his calling. He was to be the reviser and reformer of her own great laws, made dark and of small effect through men's traditions. And for what was it that he broke his vows, and laid aside, or grievously interrupted 'his vast contemplative ends,' during the drudgeries of Term and Parliament? He left it for a life truly much more alien and debasing than the most humbling legends concerning his immortal contemporary—that contemporary, whom perhaps he never saw, except it might be (as the legends go) holding gentlemen's horses at the playhouse door, or acting the ghost in his own Hamlet. Yet how really kin to him was Shakspeare! Much more so than Robert Cecil, the cousin-german, whom he sought in vain to wheedle, by affecting that he had ever thought there was some sympathy of nature between them, though accidents had not suffered it to appear! How much farther even than generous and surly Ben, would Shakspeare have seen into the only greatness Bacon could never want—that of the philosophy and the poetry of their common genius! He was, as he said, a man of books; and in all that concerned states or greatness few cases might be new to him. But it is evident that Elizabeth was right, when he grew to manhood, in regarding him as incapable of turning his speculations to profitable actions. Her successor also found out, and told him, that 'he was not made for small matters.' Yet small matters make up ninety-nine parts out of a hundred of public life as well as private. What the world may have lost by so misplacing Bacon, the world will never know. We only know it got little in return. While, alas for himself!—in all he did to be made Chancellor, and in what he did when made so—the loss to himself was *total*—the loss of happiness and of honour!

Our knowledge of Bacon,—of all that is most fatal to his character, up to the time of his Chancellorship,—is derived from his

own Letters. But for them, the gossip of his contemporaries would have been unheard of or disbelieved. On asking the name of the cruel adversary who discovered and betrayed them, what is our astonishment at finding, that, as through life he had been a friend to nobody but himself, so on this occasion it was he himself who had been his greatest enemy! Among his very latest letters is one to his successor, by this time Ex-Keeper Williams, (he had been just turned out by Buckingham,) addressed to him for the purpose of depositing them with him for posterity; since many of them, as touching on late affairs of state, might not be fit to be published yet. Here we see him in a succession of begging letters, (such letters as can seldom push their way to any other secretary but that of a mendicity society,) begging for place or for promotion, as men starving beg for bread. We put our hand over the page at last, as much from being sick of its monotony, as from a sense of shame. The importunity is the more degrading, since he could not possibly suppose that he had been passed by unintentionally. It is here that we see him false to the generous Essex, the only friend he ever had; and base to Buckingham, 'the matchless friend,' who knew him and despised him; as pedantic and as cowardly as the sovereign whom he corrupted by his adulation; and even as arrogant and insolent to Coke, in cold blood and bitter spirit, as was ever Coke himself to Raleigh and the other unhappy men whom that most savage of Attorneys insulted, hacked, and mangled, before he turned them over to the halter or the axe. The debasement of the marriage institution by the sale of infant wards, was one of the most corrupting consequences of the feudal system. But the evil habits it introduced, can be no excuse for the marriage brocage correspondence of a grown-up man;—not even of Francis North, much less of a Francis Bacon. He seems to have got on as ill with his wife almost as Coke; and has immortalized their quarrels in his Will. Coke was too stout-hearted, we should think, to have transferred his hatred of Lady Hatton into this solemn instrument. But the government, upon his death, carried off his Will with his other papers; and it was no more heard of.

On reading Bacon's Letters, we feel that, for the first time, we are learning from them his true nature. It is now, too, we first can understand how it was, that the Cecils would never take to heart the interests of a relation of whom they would be naturally so proud. What alone, for instance, after all that had passed betwixt them, could Lord Salisbury have thought of the looseness and absurdity of his 'protesting before God, that if he knew 'in what course of life to do him best service, he would take it,

'and make his thoughts, which now flew to many pieces, to be 'reduced to that centre.' Literary vanity (like other vanities) must be paid for. But the vanity of following the example of Cicero and Pliny, was dearly purchased by the scandal of the revelations which are laid open in these Letters. It cannot have been insensibility to shame: it looks more like an unconsciousness of any thing deserving blame. All people are proverbially unfair judges in their own cause. With most, however, this is an unfairness of degree. Yet instances arise, from time to time, in which extreme selfishness appears to have absolutely destroyed, wherever the parties themselves are interested, the optic nerve on which our moral perceptions depend for light. Such people may be the best advisers in the world for other persons; yet, nevertheless, they may exemplify to perfection the prudent maxim of the courts, that he who is his own counsellor has a fool for his client. Montesquieu's striking character of Cicero —*Un beau génie, mais une âme souvent commune*—applies still more strikingly to Bacon. For we are afraid, if Bacon's genius was of a higher order than Cicero's, his spirit was proportionally lower; and that he was much more constant in consulting his spirit, not his genius, in every thing that concerned himself.

The evil habits which led to Bacon's fall, and his conduct on his impeachment, are in keeping with his former life; *only* that, to our own mind, they are far from being as dishonourable—bribery and all—as the greater part of it. He said, and we have no doubt truly, that he had never been reputed avaricious. The jackdaw taste for hoarding was not among his weaknesses. But he was expensive beyond his means; and it is the empty bag which finds it hard to stand upright. Where the fund was to come from for defraying these expenses, was not thought of at all, or not in time. The pressure came—a pressure to be met only by stern, inviolable principles; by that kind of instinct in practical virtue which Bacon never had. The vague way, in which he generalised over his affairs, is singularly illustrated by the provisions of his will. He is founding Lectureships in the Universities; when, if he had looked back upon his most recent Letters, he would have learned that his honest debts were ill provided for. His difficulties, and finally his disgrace, were probably very much contributed to by his careless government of his dependents. It was quite in character that he should let them have things their own way, and leave them to themselves. When his grateful servant, Meautys, put up that most interesting of all monuments, '*Franciscus Bacon sic* '*sedebat*,' it was not only from reverence;—we doubt not but that the recollection of many kindnesses brought tears, at the time,

into his eyes. But other men, whose lives will bear as little examining as Bacon's, have been soft and indulgent masters. Persons, not strict themselves, cannot easily be strict with others; and the false indulgence which corrupts and ruins, is neither a virtue nor a kindness. There is, indeed, a strange anecdote told of Bacon; and (stranger still) we have seen it cited as a favourable instance of his charity. According to the story, when he was informed that his servants were robbing him, taking money from his closet, all he said, was 'Ay, poor men, that 'is their portion.' A pretty school this, truly, for the servants of a Judge, presiding in a court of arbitrary equity, with no precedents, and few rules! What chance, in that case, of protection for a suitor against harpy hands? We know from Norburie, that annuities and pensions were made out of *the favours* of the Court, such as fixing days of hearing, &c. The credit of the story may probably be reducible to the inference which bystanders would draw, of the uselessness of remonstrance with a master so careless or corrupt, that the liberties which he allowed his servants to be taking with other people, were only those which they were taking with himself.

The narrative of Bacon's behaviour on his impeachment lies in small compass. At the first news of the accusation he is full of confidence—'desiring no privilege of greatness.' He is 'as inno-'cent as any born upon St Innocent's Day.' Before the week is over, however, he 'flies unto the King's Majesty with the wings 'of a dove, which once within these seven days he thought 'would have carried him a higher flight.' Though still, 'on enter-'ing into himself, he cannot find the materials of such a tempest 'as is come upon him.' A month passes. He has by this time understood the particulars of the charge, not formally from the House, but enough to inform his conscience and his memory. Upon which he suddenly falls back upon 'the justification of Job:' confesses his sin 'without fig-leaves!' and moveth their Lordships to condemn and censure him; only begging of them 'charitably to wind about the particulars of the charge, here 'and there, as God shall put it into their minds—and so 'submits himself wholly to their piety and grace.' The utmost of his desire is, now, that his penitent submission might be his sentence, and the loss of the Seals his punishment. At the same time, like a good citizen, he professes to find gladness in the reflection, that 'the greatness of a magistrate here-'after will be no sanctuary for guiltiness; which, in few words, 'is the beginning of a golden world.' It is melancholy to see him in this extremity, when 'prostrating himself before 'the mercy-seat' of James, take credit with his master for not

moving him to interpose his absolute power of pardon between the sentence of the House; and reserve for the royal ear the pitiful palliation of a courtier—that he 'was still a virgin for 'matters which concerned his crown or person.' He is even playful with his disgrace: 'Because he that hath taken bribes 'is apt to give bribes, I will go further, and present your Ma- 'jesty with a bribe. For, if your Majesty give me peace and 'leisure, and God give me life, I will present your Majesty with 'a good History of England, and a better Digest of your laws. Strange levity at such a moment, on such a subject!—a levity as impossible for Sir Thomas More, as More's own jesting on the scaffold was unintelligible to Lord Herbert;—more inconsistent and perplexing than even the boisterous pleasantries of Crom- well, to the placid taste and judgment of David Hume. Bacon calls upon the King with his accustomed eloquence, and with all the freedom of truth and virtue, to go on with the good work. How little did he foresee that, within twenty years, the civil refor- mation, of which he considered himself to be, as it were, the first martyr, would have destroyed his favourite Star-Chamber as well! 'Your Majesty's Star-Chamber, next to your court of Parliament, 'is your highest chair. You never came upon that mount but 'your garments did shine before you went off. It is the su- 'preme court of judicature ordinary; it is an open council. 'Nothing, I could think, would be more reasonable than that 'your Majesty would be pleased to come thither in person, and 'make there an open declaration that you purpose to pursue the 'reformation which the Parliament hath begun.' What inno- cent person could advise more coolly? To the day of his death, Bacon seems to have been unable to see his own offence as he must have seen it in any other person. How differently had he seen it, from the heights of his lofty speculation upon human life, and the 'Colours of good and evil,' when, in his noble 'Essay 'upon Judicature,' he had proclaimed to Judges, that, 'above 'all things, integrity was their proper virtue; that the place of 'justice was a hallowed place; that not only the bench, but the 'footpace and purprise thereof ought to be preserved from scan- 'dal; for justice cannot yield her fruit with sweetness among 'the brambles of catching clerks.'

In accordance with his blindness to his real position, there are found among these later Letters, much sorrow for himself on thinking over 'from what height fallen;' much vain fawning also upon Buckingham, who had not forgiven his interference about his brother's marriage, and was now only scheming to extort from him, in his calamity, the surrender of York House. 'God above,' he supplicates to him, 'is my witness, that I have

'ever loved and honoured your lordship, as much, I think, as any son of Adam can love or honour any thing that is a subject; so yet I protest, that at this time, low as I am, I had rather sojourn the rest of my life in a collage of Cambridge, than recover a good fortune by any other means than yourself.' His frequent tentatives upon the coxcomb heart of James were long as fruitless. 'I have been ever your man, and counted myself but an usufructuary of myself, the property yours.' Mean time, the King and Favourite were only thinking of getting him down to Gorhambury out of sight;—plainly telling him, that 'any longer liberty for him to abide in London was a great and general distaste, as he could not but easily conceive, to the whole state.' It was only after the return of the Prince and Buckingham from Spain, that Bacon at last succeeded with the King to pass his pardon. 'I have been somebody by your Majesty's singular and undeserved favour, even the prime-officer of your kingdom; your Majesty's arm hath been often laid over mine in council, when you presided at the table, so near I was. I have borne your Majesty's image in metal, much more in heart. I was never, in nineteen years' service, chidden by your Majesty, but, contrariwise, often overjoyed when your Majesty would sometimes say, I was a good husband for you, though none for myself; sometimes, that I had a way to deal in business, *suavibus modis*, which was the way which was most according to your own heart; and other most gracious speeches of affection and trust, which I feed on to this day.' These most humiliating entreaties prevailed at last. Yet to the last we see no contrition—no feeling of moral degradation. His imagination is satisfied by making out a difference of shades,—'a difference not between black and white, but between black and grey,'—between his own offence and that of Sir John Bennet; and he writes under the strange impression, that the ignominy of his condition was not in the offence which he had committed, but in the punishment awarded to it. 'I prostrate myself at your Majesty's feet, I, your ancient servant, now sixty-four years old in age, and three years five months old in misery. I desire not from your Majesty means, nor place, nor employment; but only, after so long a time of expiation, a complete and total remission of the sentence of the Upper House, to the end that blot of ignominy may be removed from me, and from my memory with posterity; that I die not a condemned man, but may be to your Majesty, as I am to God, *nova creatura*.' On this, a pardon of his entire sentence was made out; and he was summoned to Parliament, on the accession of King Charles, the succeeding year.

Our reverence for the genius of Bacon is so great; we have that sense of what we owe him for the delight and profit mankind have reaped from his immortal writings; we feel so deeply what it is we lose in hope and glory, and how all that is most magnificent in the prospects of human nature is clouded over by that melancholy antithesis which holds forth Bacon as at once 'the wisest 'and the meanest of mankind,' that nothing can be thought of in the way of monument or reward which ought not to be gratefully bestowed, not only by fellow-countrymen, but by fellow-men, for a nobler restoration of attainted blood than ever fell to the office of any herald, upon the man who should indeed remove 'the blot of ignominy' from that still most resplendent name. But, unfortunately, the facts, and the one rational construction of them, admit of neither gloss nor question. By attempting to disturb the verdict of his contemporaries, we could not hope to make the least impression upon any one acquainted with the subject; whilst we should disqualify our judgment, prove ourselves disloyal to the truth of History, and rub out the line between right and wrong which it is the very province of History and of virtue to preserve. We know there is a silly notion, that Bacon made his submission to oblige and cover James. Nothing is less true. His disgrace, as well as that of Middlesex soon afterwards, were serious embarrassments to the government, and were personally grave annoyances to the King.

To rush to the conclusion, that, because Bacon was corrupt, all lawyers were rogues, was a vulgar generalization, natural enough to James; but it would not be less absurd to suppose that Bacon was sacrificed from any Court intrigue, or from any love for Bishop Williams, or from any abstract wish for a Churchman as Lord Keeper. Many witnesses might be called. We will call only one; but that one shall be Hale. He was the friend and executor of Selden. Selden was compiling his Treatise on the Judicature of the Lords during the time that Bacon's impeachment was going forward. He glanced at the impeachment in its proper place, and passed on. Hale in a similar work, nearly fifty years afterwards, had occasion to explain the circumstances under which the House of Lords had first obtained jurisdiction over Appeals from the Court of Chancery. In doing this, he was compelled to refer to the case of Bacon. And he refers to it in language which must dispose, we fear for ever, of Bacon's last subterfuge, that he had sold justice, not injustice. 'The Lord Ve-'rulam, being Chancellor, made many decrees upon most gross 'bribery and corruption, for which he was deeply censured in the 'Parliament of 18 *Jac.* And this gave such a discredit and brand 'to the decrees thus obtained, that they were easily allowed; and

'made way in the Parliament of 3 *Car.*, for the like attempt 'against decrees made by other Chancellors.'* Hale objected strongly to this innovation, on reasons both of policy and law; but nobody will suspect him, on that account, of misrepresenting the Chancellor, through whose corruption the appellate jurisdiction had happened to get in.

Perhaps no two men ever stood so long and so near together, who were in greater contrast than Bacon and Coke—the one the master of universal philosophy and reason—the other the oracle of the English common law. It is difficult to conceive two men more unlike in their intellectual and moral natures—in what was good or bad in them. What one had, the other wanted—what one wanted, the other had. Bacon was misled by his easy nature and ordinary moderation—by the consciousness of genius, as well as by the flattery, whether of silent wonder or tumultuous applause, which, amidst all his mortifications, must have often followed him. He was not aware that he had offended any one; he concluded, therefore, that he had no enemies. It never occurred to him that he had loved nobody at all; that he had never obliged a human being by opening out his heart to him, or by any testimony of true affection! And that, therefore, though he might have dependents, or, in our homeliest Saxon-English, might have hangers-on, he could scarcely hope to make a friend: certainly could not keep one. He thought himself a general favourite—was ostentatious in discourse on the popularity he presumed upon—and he was only roused out of the pleasant dream by the sudden storm under which he reeled for a moment, and then fell. The situation of Coke was precisely opposite. His forbidding manners were made still more repulsive through his wearisome and crabbed learning. The haughtiness of his temper, and the frequent scandal of its public exhibition, surrounded him with a palpable atmosphere of unquestionable hatred; of which he himself must have been abundantly aware, and which the odour of patriotism that he died in, scarcely could dispel. In the case of Bacon, the public would be long unwilling to believe any thing against him. In the case of Coke, they were as long unwilling to believe any thing in his favour. But time sets these things right. Posterity, looking from a distance, is more truly just. The faults of Coke were brave and open—were redeemable, and were redeemed. Those of Bacon lay deeper, were more secret, and held the whole man more thoroughly in dominion. The generation, of which he was the glory and the shame, felt at last

* Hale's *Jurisdiction*, c. xxxiii.

that it had been humbled by him more than it had been raised. He was left to die without one sign of mourning or of honour, save a few magnanimous words* from old Ben Jonson. His last Will and Testament was administered to by creditors—the men whom he had singled out from among his countrymen to be his executors, all declining. While, alas, and worst of all! the gauntlet which he threw down in that most melancholy of all bequests—leaving his 'name to men's charitable speeches, to 'foreign countries, and future ages'—there it is, still lying on the ground unnoticed!—no one daring to take it up, to vindicate him—no one wishing to take it up, to dwell on his disgrace.

Lord Campbell's last volume, ably and summarily as he dispatches them, can manage to dispose of only forty years—that is, of the Commonwealth and of the remaining Stuarts. The Commonwealth came and went without doing much for the administration of justice. Two Stuarts take up the degraded interval which separates our unfortunate civil wars from our fortunate Revolution. However, after giving fortune all the credit she so well deserves for the part she played in the Revolution, and especially for getting it the name of glorious, we have a pleasure still in looking upon it as the natural termination of the preceding struggles—as the great reward no less of Pym and Hampden, than of Russell and of Sydney, of Burnet and of Somers. For much of this we have to thank the two last Stuarts themselves. They would not leave their natural adherents—Cavalier gentlemen, prerogative lawyers, or high church divines—the Ormondes, the Finches, and the Sancrofts—the ordinary excuses for subservience. The first of their Chancellors, Clarendon, has one great merit in common with Wolsey. Their fall made an era in the character of their respective masters. Henry VIII., when thus deserted, became at once a Moloch in cruelty; Charles II. a very

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* The noblest passage in all Ben Jonson's writings is his protest in defence of Bacon. What would we not give, that we could see in it proof of any thing but that every faculty belonging to its writer was overwhelmed, subdued, and dazzled by a genius, which some have conjectured that most of his countrymen were slow in apprehending! 'My conceit towards his person was never increased toward him by his place or honours; but I have, and do reverence him, for the greatness that was only proper to himself, in that he seemed to me ever by his work one of the greatest men, and most worthy of admiration, that had been in many ages. In his adversity, I ever prayed that God would give him strength, for greatness he could not want. Neither could I condole in a word or syllable for him, as knowing no accident could do harm to virtue, but rather help to make it manifest.'

Belial—as sordid as licentious—ungrateful, and even unforgiving. James II. had never been altogether free from some of his brother's looser immoralities; but in the severer and fiercer vices—within his own dark province—after he was inflamed by opposition, he reigned supreme. The worst that can be said of Jeffreys, his own appropriate Chancellor, is, that he was his well-assorted Vizier; and that, as an incarnation of barbarity, he might have been attainter-general of the best of his contemporaries, to Henry VIII. himself. Hawles, who was Solicitor-General after the Revolution, in his remarks on Fitzharris's trial, mentions a conversation on the misgovernment of the two preceding reigns, which he had subsequently had with a nobleman of great consideration in those times. 'The nobleman 'was complaining that the king was misled by the advice of 'his lawyers. I asked him, whether the king put his judges 'and counsel upon doing what was done without considering 'whether it was legal, as the common vogue was he did; or that 'his lawyers first advised what to be done was law? He answered 'me on his honour, the king's counsel-at-law at first advised that 'the king might do by law what he would have done, before he 'commanded them to do it.' The true character of these dark transactions has been since exposed. The iniquity of them is shared, without being divided. The King and his advisers hold the infamy in common, *par mie et par tout.* Both have all.

'The Church was, the Sword is, the Law will be,' was a saying even of Cromwell's soldiers. The glory of the Law could then be understood to be in prospect only. While Rolle and Hale were the two pillars of the Common Law, as far as Chancery was represented at all, it was represented by Bulstrode Whitelock. The sight of Major Lisle presiding in the Court of Chancery, must have grieved the Lawyers quite as much as troopers stabling their chargers in the cathedrals can have disturbed the clergy. Every thing was in confusion; but the confusion must have been worse confounded if these distinguished Lawyers, instead of standing at the helm of their respective courts, had thought it their duty to follow the example of Vaughan, who got out of the way under the cover of his Welsh mountains. From Cromwell's notions of jurisprudence, or from the necessities incident to the novelty of his reign, it must be admitted, that it required no small degree of fortitude or patriotism in honest men to have the virtue to remain. They had no end of humiliations to undergo at the hands of the powers in being, in the discharge of their judicial duties. However, considering Whitelock's real opinions, we cannot but allow, that he might as well have let some one of the Major-Generals have had the drawing up the ordinances for abolishing the Lords and the Monarchy.

On the one side, there was an out-and-out party, still more wild and violent, calling for even the burning of the national records—worse than the Knoxes of the Law! On the other side, a body of conservative Lawyers kept in presence; offering a passive resistance so subtle and persevering to all attempts at reformation, that Cromwell on his part was as fully justified in exclaiming against the sons of Zeruiah. The details will be found in Lord Campbell's graphic narrative, and in Godwin's *Commonwealth*. The reasons in the background which banded the Lawyers together against all Cromwell's hopes at reprincipling, recasting, or even weeding out the admitted abuses of the law, are preserved to us by Hale. He was himself one of the Committee, and was much too learned and considerate not to share in a great degree in the feelings and the policy which he describes. 'In the late 'troubles there was very great earnestness, by those who had 'gotten the power in their hands, for the reformation of things 'amiss in the law. And I do verily believe, that any thing might 'have been passed in that kind, that prudent and knowing 'men would have offered. Nay, possibly there was scarce any 'thing that could have been offered, introductory of any alteration but would have been greedily swallowed. But that, 'which wise men do most desire, they did then industriously 'decline; and they did rather choose to obstruct the proposal, 'or the passing of those things, which possibly for the matter of 'them might be good and useful, than any way to promote or 'advance them—and the reasons were principally these: First, 'because the state and constitution of the government was then 'fixed upon a tottering and unwarrantable basis; so that any 'laws, that according to the mode of these times were passed, 'would be but snares to men's actings and estates, and involve 'the generality of men and their estates and properties in a very 'dangerous condition, if ever things returned to their right constitution. And we very easily found the difficulty of settling 'things upon the king's return; which would have been infinitely 'more difficult, if the ordinary method of administration of courts' 'rules and laws, touching estates and properties, had undergone 'that alteration that was desired by those that were then in 'power. Secondly, because it was evident, that there would 'have been no one thing more obstructive to the king's return 'than such a course; for upon a sudden, all men's properties, 'estates, and assurances, would have much rested upon such 'new laws; and have engaged the community, upon an account of their common interest, to have supported that power 'which introduced those laws, wherein they were so much concerned. And the truth was, *this* was the great reason; the

'mystery, why reformation of the laws was so much desired by 'those then in power; and on the other side, as industriously 'and warily declined and shifted off by many good and knowing 'men that were respected in these times. The things desired 'were many of them, for the matter, good; but the end and 'design, and the state and condition of things, would not allow 'of such an undertaking. And therefore those that were so-'licited to undertake that business, rather chose to propound 'such things only to be done, as might be done by the power of 'courts of justice; but declined whatsoever required a new law to 'authenticate it.' *

The Chancellors of the last Stuarts take up very little space in the Almanac, (only eight-and-twenty years;) but they are permanently fixed, at least their names, in English history. Clarendon and Bridgeman were born about 1609; they both died in 1674. Shaftesbury and Nottingham were both born in 1621; and they died within a month of each other, in 1682–3. Guilford came on the stage a little later, (1637,) Jeffreys a few years later still, (1648;) the one, however, died in 1685, the other in 1689. The whole party therefore are, for the purposes of biography, and almost of history, contemporaries. Whatever influence the age they had the misfortune to live in, exercised upon them for evil, its degrading influence was common to them all. Of these eight-and-twenty years, Clarendon's Chancellorship lasted seven, Bridgeman's five, Shaftesbury's one, Nottingham's nine; while Guilford's and Jeffreys' were about three years each. Supposing it to be any thing like true, that, at the Restoration, the foundation of the Court of Chancery had to be for the most part taken up and laid anew, by whom can it have been laid?

Having the burden of the Restoration on his single shoulders, Clarendon could look after little else than the Restoration itself. Bridgeman, it is admitted, lost in Chancery the reputation he had earned at Common Law. From Shaftesbury, as an *Abethdin*, nothing more could by any possibility have been got than clean hands and discerning eyes. Even that was more than the government which had the scandal of appointing him, could be entitled to expect. Guilford and Jeffreys sat, as Chancellors, for too short a period to do any thing towards creating a system; or even towards any useful incubation of one which might be already in the shell. We are not aware what was the authority, which first fathered upon Nottingham the paternity of a system, so curiously conceived and fashioned, and so much born out of its

* *Considerations touching an Amendment of the Laws.*

time, as modern English Equity. But we do not see, among his contemporary Chancellors, any one at all likely to dispute with him the credit of it. From what Nottingham has related of the services rendered by Hale in Equity, both to his predecessors and himself, it may be doubted whether the honour of this affiliation ought not to be divided, and a moiety transferred to Hale. The following passage is only a small part of the larger abstract of his character, which Nottingham gave to Burnet after long observation and much converse. He gave it, as a testimony due from him to the greatest lawyer of the age. 'Nor did men reverence his judgment and opinion in courts of law only; but his authority was as great in courts of equity; and the same respect and submission was paid to him there too. And this appeared not only in his own court of equity in the Exchequer chamber, but in the Chancery; for thither he was often called to advise and assist the Lord Chancellor, or Lord Keeper for the time being. . . . From his observations and discourses, the Chancery hath taken occasion to establish many of those rules by which it governs itself at the present day. . . . As great a Lawyer as he was, he would never suffer the strictness of law to prevail against conscience; as great a Chancellor as he was, he would make use of all the niceties and subtleties in law, when it tended to support right and equity.'

Considering how completely all the Equity reputation of this period has been vested in the person of Nottingham, it is surprising to find that Guilford, on succeeding him, should appear to have assumed that he was succeeding to a court swarming with abuses. We hear, however, of Guilford's good intentions only; little or nothing done. Sunderland and Jeffreys found him in other work. Lord Campbell, comparing Lord Guilford with Lord Nottingham, observes that 'a Nottingham does not arise above once in a century.' We dare say his traditional supremacy was well earned. But it is a pity that we have to take so much for granted. We are left greatly in the dark concerning the precise nature and extent of his merits, as the great legislator of this most extensive compartment of judge-made law. The contemporary legislation carried on by Pemberton, in the King's Bench, and which he is said to have compared so saucily with the corresponding progress made in Parliament, must have looked contemptible by its side. We shall be much obliged to Mr Spence, if he should tell us, in his promised work on Chancery Jurisdiction, what it was that Lord Nottingham really performed for it. He would increase the obligation under which he has already laid the public, if he would also further distinguish between that portion of the business now annexed to the Court of

Chancery, which has had a purely historical origin, but which could as well be dispatched at present in courts of Common Law; and that other portion which may be said to more properly and naturally belong to it, in consequence of the court of Equity, in the cases in question, being better adapted to the discovery of truth, or to administering a more complete justice. These are topics in which he will not find himself anticipated by Mr Justice Story.

In his fear of making his book too professional for the general reader, Lord Campbell runs the risk occasionally of falling into the opposite extreme. History can be written off (and in some respects with more effect) from striking facts and general impressions. But lawyers must write with their books about them. We may be showing more courage than discretion, in presuming to question one or two of Lord Campbell's Rulings on points of law. But the sanction of his name is of too much consequence, not to make us willing to venture on the imprudence, and seek to win it back where we think him wrong.

One of these cases is the impeachment of Fitzharris for treason. In the judgment of Lord Campbell, it was a mistake of that magnitude, both in policy and law, as to have done much towards alienating the people from the House of Commons. He speaks of it, as if it had been the main cause, and were almost a sufficient justification, of their deadness, among all those ignominious scenes with which Charles II. tried the patience of his subjects during the remainder of his reign. Let us look more nearly at the facts. Fitzharris, it will be recollected, had been impeached of treason by the Commons, and the impeachment rejected by the Lords, on the ground, (among others,) it is supposed, of their not being bound or entitled to proceed in this way for such an offence, against any one but a member of their own body. Lord Campbell thinks they were right in so deciding; while Mr Hallam thinks otherwise. We venture to cast in our lot with the latter; but it is necessary to consider how the question arose.

On one side, we see the chiefs of the popular party bent on excluding the Duke of York from the succession, and determined to accept no compromise. On the other side, the Duke of York has at last apparently prevailed upon the King to join him in the resolution of raising again the royal standard at Nottingham, rather than that the King should be compelled to disinherit his brother of the crown by act of Parliament. Under these circumstances, what was the temper of the nation? It was not terrified out of its ancient spirit. Still less was it fooled into any maudlin loyalty to the pensioner of France. But it laboured

under a deep and natural dread of a second civil war. The people were ready for any thing short of that. The recollections of their late experiment and of its failure—of all that they had suffered under the contest and the Commonwealth—were still the household talk of every family. Under these circumstances, they paused and looked around them and took breath. They drew back for a time from their impetuous leaders; especially when they had the misfortune to have Shaftesbury for a leader. Supposing, however, that their state of mind may be properly described as a reaction, and that the blame of it must be laid at the door of the House of Commons; in what measures, then, shall we find enough of substance—enough of excitement—to account for this result, in our choice of causes? We answer immediately, first and foremost, in the Exclusion Bill. This was the end, to which all the other measures were only means. It was the measure which alone was certain to unsheath the sword. The reign of James II. fully justified the obstinacy of the House of Commons. But it was a justification that necessarily came too late for the community at large. This, therefore, was the principal cause which brought the people to a check. The people stopped, under some uncertainty whether the Exclusion Bill were absolutely necessary for their security; but more especially, under a present apprehension of the immediate consequences of insisting on it.

There was, however, at this tickle time, another cause in active operation, which, we may depend upon it, though it may look small in history, had nevertheless considerable effect in cooling, towards the House of Commons, many honest friends it could ill afford to spare. This was its almost Cromwellian fierceness in punishing as a breach of Privilege the exercise of the plainest rights: whether by the commitment of Counsel for pleading before the Lords, contrary to their order; or by the commitment of political opponents, who made themselves obnoxious by getting up addresses to the Court. We do not want the evidence of Roger North to assure us, that the names of Topham and of Privilege were bywords over England. On this point, however, Lord Campbell probably agrees with Shaftesbury; and deems it little less than a betrayal of the liberties of the country, to object to our fellow-citizens being voted into Newgate by a simple resolution of either House. Accordingly, tyrannical commitments are not among the grounds of the unpopularity into which Lord Campbell supposes the Commons' House to have fallen with the Commons. The King and his advisers thought otherwise at the time. Lord Campbell supposes that the Declaration, which they then drew up, contribu-

ted greatly to the reaction going on; and that its topics were dexterously selected. But among the offences with which they charge the House of Commons,* in respect of which the King boldly put himself on his country, a prominent one was this: 'Their arbitrary orders for taking his subjects into custody for 'matters that had no relation to privileges of Parliament.' There is another illegality, however, to which the ruin of Shaftesbury is ascribed, and for which all Lord Campbell's indignant censure is reserved. It is in the parliamentary impeachment of a Commoner for treason, that Lord Campbell sees so gross a violation of the constitution, that those who run might read it—and, having read it, could not pardon it.

The case of Fitzharris arose out of the rumours of plot after plot, Popish and Presbyterian, by which the nation had been maddened and demoralized for years together. Oates and Bedloe, Dangerfield and many others, had speculated upon these unhappy panics, with more or less success. Fitzharris seems to have been tempted by their success to dabble in the like wicked arts. But he was a year or two too late. Men were gradually returning to their senses. The Court did not yet venture to speak out; however, they took heart enough to lay hold of Fitzharris and his libels, and remove him from Newgate to the Tower. The Country had then unfortunately too deep an interest in blackening Popery, to disabuse themselves of their delusions as speedily as the courtier party. They believed, or affected to believe, that Fitzharris could make discoveries which would compromise the Court. They argued, accordingly, that the Court would either never bring him to trial at all, or would conduct the trial in such a manner as to shut out all disclosures. To prevent this, the House of Commons, which met at Oxford March 24, 1681, on the second day of its sitting impeached him

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* The House of Commons lowered themselves by similar violence, five-and-twenty years afterwards, in the Aylesbury case. The House of Lords 'ordered the Lord Keeper to send a copy of the case and of their votes to all the Sheriffs of England.' The House of Commons was much provoked with this, but they could not hinder it; *the thing was popular*, and the Lords got great credit by the judgment they gave, which let the people of England see how they might be redressed for the future, if they should meet with the partiality and other ill practices that of late had appeared in elections, even beyond the examples of former times. This may prove a restraint on the officers, now they see that they are liable to be sued, and that a vote of the House of Commons cannot cover them.'—Bishop Burnet's *History*, A.D. 1704.

of treason; and sent up the impeachment to the Lords by Secretary Jenkins. The Secretary at first refused to go with it, as reflecting on the King. So considered, it was not likely to receive much favour from the Lords. They were not long in disposing of it. The entry in their journals the day after, merely notices the fact, that Fitzharris had been that day impeached of high treason; that no articles were brought up against him; that the Attorney-General acquainted them of a previous examination taken against him, and of the King's orders on the 9th of March instant, to prosecute him at law. 'Resolved he shall be pro-'ceeded with at common law!' Of course, the Commons resented the throwing out of their impeachment; and, in another four-and-twenty hours, this five days' parliament is dissolved. Lord Guilford went off to London, to alarm the moderate with tidings of 'the positive armament against the King,' which he was just come from, and to draw up the declaration (to be read in all churches) of the reasons which had moved the King to dissolve the last two parliaments. But this declaration does not even touch upon the topic supposed to be so popular a grievance—the impeachment of a Commoner by the Commons. It grounds the last dissolution on the votes by the Commons, that the refusal of the impeachment of Fitzharris by the Lords was a denial of justice; 'thus putting the two Houses out of a capa-'city of transacting business together.'

Supposing the Commons to have been technically wrong in impeaching a Commoner for treason, it was at worst a venial error. It is a point upon which we cannot imagine any one, who would otherwise have stood by them, to have been so extremely sensitive as to have passed over, in consequence, to the other side. But were they wrong? It is a pretty strong presumption, not only that their error, if any, was one with which the friends of constitutional freedom might have dealt gently; but that, after all, they were not in error—when, at this distance of time, Mr Hallam continues still to be of their opinion. The proceedings at Oxford on the impeachment of Fitzharris, are not of themselves entitled to the least consideration. We must go further back. On that occasion, there was neither time nor temper on either side for investigating a nice question of constitutional learning. However, as these proceedings are relied upon, it is proper to observe what they really were. Whatever weight may be now attributed to Lord Nottingham's theory of the law of *Magna Charta*, and his individual argument, the Lords had the caution to confine the entry in their journals to the simple juxtaposition of dates—the date of the impeachment, and the prior date of the King's instructions

for the indictment. Accordingly, some weeks after, when Fitzharris, on being indicted in the King's Bench, pleaded to the jurisdiction, the Attorney-General, in answer, took no notice of the supposition, that the House of Lords could have no jurisdiction over a Commoner. But, after mentioning his exceptions to the plea for informality, he added that he had one exception to the matter, and only one. He grounded his exception on the resolution of the Lords. 'Here,' he says; 'here the point will 'be, whether a suit depending, even in a superior court, can take 'away the jurisdiction of an inferior court, who had an original 'jurisdiction of the cause, of the person, and of the fact, at the 'time of the fact committed.' The Court pronounced a dumb judgment in favour of the Crown, upon the point of form.—(the first judgment without reasons, it was said, that had ever been known in England.) The prisoner pleaded to the indictment; and, next term, he was hanged out of the way. There is no other case, we believe, which is the semblance of a precedent for the proposition, that Commoners cannot be impeached of treason before the Lords. While the precedents of the impeachment of C. J. Scroggs in 1680, and of Sir A. Blair in 1690, are both of them precisely and decisively the other way.

Lord Campbell mentions sundry reasons for his opinion. On these we will not enter. For his main reliance is on the authority of two great lawyers—Blackstone and Hale—in their characters of text-writers. If they should fail him, his reasons will follow too. On examination of these authorities, what do they come to? Blackstone, (and Wooddeson after him,) certainly does express the opinion assigned to him. But the authority of the Commentator must be measured by the authorities on which his opinion proceeded, and which he there refers to. The authorities so referred to, are the case of Beresford cited from the Rolls; and a chapter in Selden.* It is difficult to believe

* The Lords of only the preceding generation had themselves put their seal upon Selden's authority. Hale informs us, that 'Mr Selden, being a man of great learning, was employed by the Lords in Parliament, 18 Jac., to collect the privileges of the Lords; which was done and presented to the Lords, and by them ordered to be bound up and preserved as a *kind of standing evidence of their jurisdiction* and privileges; as appears by the journal of that parliament, viz. 30 Novemb. and 15 Dec. 1621, which book is still preserved among their archives, and is printed.' The conduct at Oxford of as many of the Lords as may have happened to have become acquainted with that book, can scarcely be otherwise described than that, in order to spite Shaftesbury and gratify the King, they denied the law.

that Blackstone had really read Selden's 'Judicature of Parliament;' for, the very first thing he would have seen there, would have been a classification of the several kind of criminal matters which are brought into Parliament, and he would have perceived that the case of Beresford was carefully distinguished from parliamentary impeachment. Hale's work he had, probably, no opportunity of reading. It lay in MS. (as, to the disgrace of the English Law, is still the case with other of Hale's writings) till published as late as 1796, by that faithful, but ill-rewarded servant of the profession, Francis Hargrave.

Hale, in the 16th chapter of his 'Jurisdiction of the Lords,' treads carefully in Selden's steps. He expressly distinguishes between an impeachment before the Lords by the Attorney-General at the King's command, and an impeachment by the House of Commons. The case of Beresford, who was proceeded against *ex mandato Regis*, and of the five members who were impeached by the order of Charles the First, are both named—and are ranged together under the first class. These impeachments are, on all hands, admitted to have been illegal at common law. They might, perhaps, also be considered to be prohibited by the statute of Henry IV. against Appeals. The case of Fitzharris was an impeachment by the House of Commons. It belongs therefore to another, and entirely different class. The trial of Commoners, as such, has nothing to do with the *judicium parium*, which is the first half of the alternative of *Magna Charta*. That related to the *Pares Curiæ*. The trial of Commoners is under the other half, *vel per legem terræ*. And where the trial is by impeachment, the Commons' House is their *patria*,* their country or jury. But let us hear what Selden says. These are his very words. 'But, upon *complaints and accusa-*

* If this celebrated passage in Magna Charta were now, for the first time, brought before a court, there might be great obscurity concerning its construction. Constitutional writers have raised the same point respecting the '*vel*,' which occurs among the words *lex terræ vel judicium parium* in Magna Charta, as Barrington has raised upon the '*and*' in the culprit's answer to the question, how he will be tried—'By God *and* his country:' *i. e.* whether it should be *and* or *or*: whether it should be construed in the conjunctive or disjunctive. The proper distribution of the jurisdictions under this celebrated passage seems to be pointed out by a corresponding one in King John's charter, (A.D. 1215.) The two paragraphs are for this purpose, *in pari materiâ*. 'Nulla prædictarum misericordiarum ponatur *nisi per sacramentum legalium et proborum hominum* de vicneto comitatus: Comites et Barones non amercientur *nisi per pares suos*.'

'*tions of the Commons, the Lords may proceed in judgment against* '*the delinquent, of what degree soever, and what nature soever the* '*offence be.* For where the Commons complain, the Lords do not 'assume to themselves trial at common law. Neither do the 'Lords, at the trial of a common impeachment by the Commons, '*decedere de jure suo:* for the Commons are then instead of a jury, 'and the parties answer, and examinations of witnesses are to be 'in their presence, or they to have copies thereof: and the judg- 'ment is not to be given but upon their demand, which is instead 'of a verdict. So the Lords do only judge, not try the delin- 'quent.'

There are a few loose words dropped by Clarendon in his History, which look the same way as Nottingham's party speech a few years later. They mean little; and we should not have much respect for them on such a question, though they had meant more. Clarendon had none of this kind of learning. He is very sore at the bad faith and folly of the King in arresting the five members by the advice of Digby; but he never questions the legality either of the arrest or the impeachment. The loose words of speculation about incongruity, which he afterwards throws out, are a single line of malicious pleasure at the thought that he had put a dilemma on the rebellious House, by suggesting, that the King should ask the House for its opinion, whether he should proceed against its members by impeachment or indictment. 'They would never have ventured themselves 'upon the House of Peers under an impeachment, and thereby 'made them their judges; which indeed was *incongruous*, every 'subject being to be tried for his life *per pares vel legem terræ*, 'to both which the Lords and the impeachment were directly 'opposite.' A very easy and pleasant way, truly, (supposing him to be in earnest,) of cutting through the learning of Hale and Selden! Clarendon probably knew no better. But we confess that, unless we suppose Nottingham to have been taken by surprise at Oxford, we cannot help falling in with Burnet's version of his conduct on that occasion, and considering his irresistible argument, 'a pretence.' At all events, no prudent friend to either Clarendon or Nottingham, will do at present, what, were they alive, they surely would never have dared to do themselves—put their judgment (much less their off-hand opinions) on any matter of constitutional learning, in competition for an instant with the joint authority of Selden and of Hale—the crowning characteristic of the authority of Selden and Hale being this, that they were imperturbable men; the very opposites to political partisans; writing at their leisure, after unparalleled researches and the gravest deliberation, for the instruction of posterity.

The Lords could not have adopted Lord Nottingham's argument and put it on their journals, without the grossest inconsistency. At the close of the preceding Parliament, (Jan. 7, 1680,) they had received the impeachment for high treason of Chief-Justice Scroggs, a Commoner. They refused indeed to commit him, or even to suspend him. But he was put upon his knees, and was obliged to enter into heavy recognizances. Before any thing was done upon it the parliament was dissolved. On the very first day of the meeting of the new Parliament, (March 24,) the Chief-Justice puts in his answer. There had been upwards of two months to consider of it. But, in his answer, he objects only to the insufficiency of the articles: and submits himself and his cause to the justice of the House. Not a syllable falls either from himself, from Nottingham, or from any other human being, intimating a want of jurisdiction. On the 27th, that is three days afterwards, this objection was gravely taken (apparently for the first time in English history) in the case of Fitzharris. Therefore, at this very time, no less a Commoner than the Chief-Justice was under a similar impeachment, and was continued under it! The Lords, however, did not fall into the supposed inconsistency. In receiving the impeachment of Scroggs, and in rejecting that of Fitzharris, the Lords had the precaution to set down in their journals the specialty by which the two cases were distinguished. The course taken for this purpose has been already stated. According to the relation of the Attorney-General, he had been previously instructed to prosecute Fitzharris at Common Law. The King's Bench, therefore, was in possession of the case; which possession and precedence they were allowed to keep. Whether right or wrong, is another question. In conclusion, therefore, we deny that, in rejecting the impeachment of Fitzharris, the House of Lords decided the point in question,—the impeachability of a Commoner for Treason. But, if it had so decided, we should certainly have had no more respect for a precedent established by the Parliament at Oxford, than for precedents from the Parliaments of Richard the Second. It is plain, from the course of the whole transaction, that the rejection of the impeachment of Fitzharris was a sudden movement;—a resolution formed on the spot by parties surprised and angry, called upon on the instant to rally round the King. Deliberation was impossible. The conflict had to be carried on by such topics as could be picked up, as it were, from the floor of the House during the scuffle, and hurled at their opponents. The King was present in person, and made the rejection a point of personal honour. 'The 'King, indeed, was seen in the Lords' House, to inform them,

'man by man, on the point.' * He was not likely to have any difficulty in exerting for himself an influence he so often abused for the sake of others. For, according to Burnet, he had become 'a common solicitor, not only in public affairs, but even in private matters of justice. He would in a very little time have gone 'round the House, and spoke to every man that he thought 'worth speaking to. And he was apt to do that upon the solicitation of any of the ladies in favour, or of any that had credit 'with them.' The Countess of Sunderland wrote to Mr Sidney from Oxford on the very day of the dissolution. Under the circumstances, her letter is more than a lady's letter. She had not her cipher with her, and could say no more than send him word 'of the strange proceedings in the House of Lords; who 'have rejected an impeachment of the House of Commons: 'which has been yet never in no time practised.'

These questions, dull as they are, should not be left at rest till an occasion arrives for using them. It is then too late. The best of us are disqualified. To be studied judicially, they must be studied in a calm. Under this conviction, as Mr Hallam was not likely to continue the controversy in his own person, we have accepted Lord Campbell's challenge. After all, the question is probably one of historical curiosity only. In this Lord Campbell may be right; but not for the reasons he suggests. If we have seen the last impeachment of a Commoner for treason, the Lords may take comfort, and be pretty sure that we have also seen the last impeachment of both Commoner and Peer. The truth is, impeachments were found unmanageable, and are out of credit. They have done good service in their time; but their time perhaps is over. Nevertheless, if we read the impeachment of Warren Hastings, and Burke's remarks on it, carefully and impartially, we must admit that there is a warning in them both ways. Latitudinarian impeachments, conducted on the supposition of an unknown law of Parliament, are almost as dangerous as bills of pains and penalties, and acts of attainder. While impeachments, conducted on the terms of an indictment at common law, are a poor security against those high crimes and misdemeanours, which the Impeachments of prime ministers and proconsuls were originally intended to suppress.

There is one other point, upon which, as often as it crosses our path, (and it crosses it too often,) we are completely at variance with Lord Campbell: that is, Parliamentary Privilege. We are not to be frightened into throwing down our arms by

* *A Letter from a Person of Quality to his Friend.*

scornful words; and no friend to legal liberty need be ashamed of treading in the steps of Holt and Denman, of Erskine and of Romilly, of Hargrave and of Hallam. On the same side is to be found the name of every Judge of our own times, who has been charged with the duty of pronouncing an opinion. We hope we may never again be called upon to set our precedents in battle array. However, should circumstances force us into the field, we cannot think of letting Lord Campbell keep the quiet possession of Thorpe's case, which he makes so sure of doing. Precedents from the reign of Henry the Sixth are, to be sure, not much more regular than precedents from the reign of Richard the Second. Nevertheless, to see Thorpe's case ranged on the other side, and placed in the very front, was a novelty which made us start. If Lord Campbell, the Historian, can separate himself from Sir John Campbell the Attorney-General, we are satisfied that he will reconsider the case of Thorpe, in all its circumstances, for his next edition. Meantime, Lord Campbell is probably at the present moment engaged upon the Life of Somers. He will find in it the following passage. The statement is made by Swift in 1724, in a letter to Lord Chancellor Middleton. If Lord Campbell should take the Irish Chancellors in hand, he will come to him in due season. 'Lord 'Somers, (observes Swift,) the greatest man I ever knew of your 'robe, lamented to me that the Prerogatives of the Crown, or the 'Privileges of Parliament, should ever be liable to dispute in any 'single branch of either; by which means, he said, the public 'often suffered great inconveniences, whereof he gave me several 'instances. I produce the authority of so eminent a person, to 'justify my desires that some high points might be cleared." The strength of Somers was tasked to the uttermost in the settlement of the Revolution, and of the Succession, and in the Union of the two kingdoms. There is nothing of any consequence now remaining loose about Prerogatives. But the liberty of the subject, the credit of parliament, reverence for the laws, are all compromised by the inextricable confusion with which Privilege is still surrounded. Lord Campbell once intimated that he had a measure to propose. If he should carry out in detail what Lord Somers could only suggest in principle, it will be a noble supplement to his life of Somers. The Americans have limited Privilege, and Breach of Privilege, by law. Why should not we? It can hardly be the Republican element in our Constitution which is in the way.

Shaftesbury was a one year's Chancellor—*consul unius anni*—and nobody could wish him more. It is almost as difficult to think of him on the woolsack, as to recognize in him a possible

friend of Locke's. We should like to know a little more about that friendship—the nature of it—what presumptions it entitles us to form; for, that Shaftesbury should have been the friend of Locke, has always struck us to be a greater contradiction than all the contrasts which Dryden has collected and condensed; and to be a fact far more favourable to his character, than any other circumstance in his life. If the intimacy touched on feelings worthy of the name of friendship, there must, after all, have been some good in him himself, as well as in great part of his public conduct, and in many of the measures he proposed. His merit in the *Habeas Corpus* Act was great indeed; —a merit from which we will not detract, beyond observing, that no man in the kingdom was more likely to be wanting its protection sooner than himself!

His natural vocation, however, was clearly mischief. When it did not suit his purpose to be mischievous in his ends, he was obliged to put up with being mischievous in his means. He had studied the art of mischief as a science; and, by constant practice, he became a more perfect master in it every year he lived. Lord Campbell's sketch of Shaftesbury, as the Ariel of the Tempests by which the Parliaments of Charles II. were shipwrecked one after the other—'flaming amazement' from opposite sides, at the same moment, and in both Houses, is very picturesque. Likely enough, too, to be true; for a man who, disbelieving in the Popish plot himself, could hound on the public in their blind and hellish chase, was capable of any thing. We should much sooner trust the men who counselled the Massacre of St Bartholomew. But the probability of his having played this double part in the quarrel between the two Houses, concerning Appeals from Chancery, is stronger than the proof.

At length he overreached himself. Presuming on his past impunity, he had in 1677 the audacity to deny, that the House he was addressing was a House of Parliament at all. Upon this, the Lords *committed him for a contempt against the House, during the King's pleasure and their own.* He applied to the Court of King's Bench for his discharge: taking several objections to the form of the commitment;—among others, objecting to its generality. The King's Bench avoided any positive opinion on the return; but remanded him on the larger ground of their want of jurisdiction. Lord Campbell takes the occasion of this case to go out of his way; and to connect the General Warrant by the Lords on which Shaftesbury had been committed, with the general form, in which, he says, he took care to settle the commitment of the Sheriffs of Middlesex, on the order of the House of Commons, when he was Attorney. If the validity of such a return had stood upon

the opinions of the Judges of the King's Bench in 1677, as far as the opinions of Bainsford and his brethren were hesitatingly intimated in the case in question, its validity would be indeed questionable. The Sheriffs of Middlesex would have been very thankful to Lord Campbell, if he had let his House of Commons follow the example of Lord Nottingham's House of Lords; and had made their committal depend *upon the King's pleasure!* The law, however, is at present beyond dispute. A commitment for a contempt by either House of Parliament, or by a Court of Record, is a commitment in execution, and need not specify the particulars of the offence. But let us see how this analogy may work. The game of committing for unspecified contempts, is a game that two can play at. The Lords, the Commons, and the Supreme Courts at Westminster, may grind innocent men by the collision of their conflicting weight. Suppose a Court of Justice to fancy, that one of the Counsel learned in the Law was arguing a case before them in a manner inconsistent with their dignity—a general warrant for contempt might lodge him in prison without bail or mainprise. How singular would have been the neighbourhood of the sheriff of Middlesex, imprisoned by virtue of an Attorney-General's indefinite warrant in one cell, and the Attorney-General himself lingering in confinement in another! under a warrant framed at the Crown-Office, in the very form which, he so triumphantly records, that he prescribed for the Speaker's signature!

The distinction upon which these commitments are supported, while similar commitments, whether by inferior courts or for detention merely, are null and void, turns in these excepted cases on the supposition of a preceding judgment, which the commitment represents. The application of this distinction to a case of disputed jurisdiction, for the purpose of keeping back all enquiry into the merits, was a poor compliment to Sir John Campbell's powerful client, the House of Commons; and we cannot but regret that he should have thought himself under any obligation to do for the Representatives of the People, what, we are sure, nothing would have tempted him to do for any earthly interest of his own. Especially when two honest men were to be made the scapegoats; and for no other crime than for obedience to what the Judges, from whom they receive the law in all other instances, had told them was the law in this. The poor Sheriffs, while in Newgate, might have fallen in with the third volume of the *State Trials*. They would have found there the history of a commitment as general as their own. The patriots, who resisted Loan-money at the beginning of the reign of Charles I., ought to be as well known to Englishmen as Ship-

money and Hampden. Many gentlemen were imprisoned all over England for refusing to pay the sums assessed on them under the Privy Seal. Only five attempted to release themselves, by appealing to the law. Heath, Attorney-General, was well aware that the cause of their imprisonment would not bear the light of even those times. Accordingly, on their moving for their *Habeas Corpus*, he kept the cause out of sight: merely returning, that they were committed by the special command of his Majesty. Hyde, C. J., held the return sufficient: and would enquire no further. The Court, however, had the caution to abide by its own forms: and, when the Attorney-General pressed them to make a special entry by way of judgment, '*quia nulla fuit causa ostensa, ideo ne fuit bailabile*,' the Court stood upon the defensive, and would not allow of any other entry upon a general commitment except that of a general remand. The report of the trial and of 'the fatal judgment' is immediately followed by the great debate on the Liberty of the Subject; of which the Petition of Right was the immortal issue. The King insisted on his right to commit, and show no cause. Coke declared that a judgment to that effect, '*would 'sting us to death*.' We are sure, that as little can be said in behalf of general commitments, in the form in which they still survive. In our opinion, Lord Campbell will confer a great favour on his countrymen, if, after having drawn our attention to the subject of general commitments for contempts, he would now introduce a bill for doing away with them altogether. His bill, abolishing general commitments, must of course be accompanied by a second bill, defining those particular contempts for which alone the Courts shall for the future be entitled to commit. The Americans have done this. We again ask, why should not we? The Supreme Courts of the United States have higher powers than any English judicatory. But on the imprudent committal of an advocate by a State's Judge, about fifteen years ago, a general bill was passed immediately, which it would be a good beginning to transfer at once into our statute book.

On revising his Biographies for a new edition, Lord Campbell will detect a few inaccuracies, and here and there a few colloquialisms and allusions below the true level and character of his work. These he can easily remove; they are the almost unavoidable consequences of his wonderful rapidity of execution. Every succeeding edition, we doubt not, will improve the work for grave and austere students; will put more research into it; and regularly invest the strong places he has now been contented to slight, from his too great eagerness to push on. And yet it is probably to this rapid execution, and forward movement, that

the characteristic excellence of these volumes—their light and vigorous narrative—is to be ascribed. There are no more discussions or observations than are strictly necessary, by way of general hints, or hand-book for the sights we are to see. It is a kind of merit which we have lately been much in want of; and it is the one which, above all others, has made these Lives so very welcome to so many different kinds of readers. We have found people of all classes reading them as a Story-Book. But there is a still greater praise to which Lord Campbell is entitled—a praise beyond any compliment which mere composition can deserve. His judgments upon individuals are candid, just, and generous. His views excellent upon public affairs, and on the duties of public men. He may have weak passages to strengthen, and careless passages to correct; but he will have nothing in principle to recall.

'I hold every man a debtor to his profession,' are the first words of Bacon's 'Maxims of the Law.' Sir Edward Coke accounts for the publication of his Reports by a quaint comparison, as poetical almost as his more figurative rival would have ventured on. 'As naturalists say, that there is no kind of fowl 'of the wood or of the plain, that doth not bring somewhat to the 'building of the eagle's nest; some, cinnamon or things of price; 'some, juniper or things of lesser value; so ought every man, 'according to his power, place, and capacity, to bring something 'to the adorning of our great eagle's nest, our own dear country.' In this at least, if in nothing else, the wisest of Chancellors and the most learned of Chief-Justices, were agreed. Of the present race of Lawyers, there is not one more resolute in paying his professional debts, and in bringing in his contribution to the 'eagle's 'nest,' than Lord Campbell. He has kept his ground for many years in the front rank of zealous and intelligent Law Reformers. Out of office, while drawing neither pay nor pension, he has worked hard to keep up the judicial character and efficiency of those two anomalous Tribunals, the Privy Council and the House of Lords. And now, the volumes, of which we have given this imperfect notice, are a most unexpected addition to his services. The way was not quite untrodden. One or two deserving writers had gone before him upon favourite portions of the road. Yet not so far, but that his Lives of the Chancellors may be honestly described, not only as an agreeable contribution: They look like a good beginning towards the systematic cultivation of a long-neglected province, the Literature of the English Law.

ART. II.—*The Spanish Lady's Love.* Illustrated by LADY DALMENY. Folio. London: 1846.

THE beautiful Ballad, which the pencil of Lady Dalmeny has here graced with a series of Illustrations of kindred beauty, has long been a favourite with all admirers of poetry. Well known to the collectors of our national ballads, it has been reprinted with expressions of admiration by Percy; and it has inspired the great muse of Wordsworth to imitation of its purity of sentiment, its expressive transitions of dialogue, and its peculiar melody of versification, in his 'Armenian Lady's Love.'

Of its authorship nothing appears to be known. But some traditions remain with regard to the supposed actors in its scene, of which the substance is thus given by Percy:*—'It was a 'tradition in the west of England, that the person admired by 'the Spanish lady was a gentleman of the Popham family, and 'that her picture, with the pearl necklace mentioned in the 'ballad, was not many years ago preserved at Littlecot, near 'Hungerford, Wilts, the seat of that respectable family.

'Another tradition hath pointed out Sir Richard Levison of 'Trentham, in Staffordshire, as the subject of the ballad, who 'married Margaret daughter of Charles Earl of Nottingham, 'and was eminently distinguished as a naval officer and com-'mander, in all the expeditions against the Spaniards in the latter 'end of Queen Elizabeth's reign—particularly in that to Cadiz 'in 1596, when he was aged twenty-seven. He died in 1605, 'and has a monument with his effigy in brass in Wolverhampton 'Church.' The effigy, judging of it from the engraving in Shaw's 'History of Staffordshire,'† is a creditable performance as a work of art; representing a man of middle age, armed, and with a truncheon in his hand—the countenance gentle and pre-possessing. Shaw mentions that some of the Committee men of Stafford, during the time of the Commonwealth, had cast an eye of longing on this brazen statue of the Admiral, which they had intended, not inappropriately, to convert into a piece of ordnance. The effigy, however, was somehow rescued from their hands by the Lady Levison of Trentham, and for some time preserved for safety in the church of Littleshull in Salop, from which it was removed to the recess it afterwards occupied in Wolverhampton.

There is such a pleasing uncertainty about both the traditions as given by Percy, that the reader may adopt that which best

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* *Reliques of Ancient English Poetry*, Vol. ii. † Vol. ii. p. 157.

accords with his own fancy. 'Had the necklace been still extant, the preference would have been due to Littlecot; but, as that piece of evidence had disappeared before Percy's time, we own we incline to prefer the claim of the Admiral to that of 'the gentleman 'of the Popham family.'

In order to render intelligible the remarks we have to make upon this fine old poem, and on Lady Dalmeny's Illustrations, we shall take the liberty of reprinting it entire,—confident that no one will regret having his recollections of it thus revived.

Will you hear a Spanish lady,
How she wooed an English man?
Garments gay as rich as may be
Decked with jewels she had on.
Of a comely countenance and grace was she,
And by birth and parentage of high degree.

As his prisoner there he kept her,
In his hands her life did lye;
Cupid's bands did tye them faster
By the liking of an eye.
In his courteous company was all her joy,
To favour him in any thing she was not coy.

But at last there came commandment
For to set the ladies free,
With their jewels still adorned,
None to do them injury.
Then said this lady mild, "Full woe is me;
O let me still sustain this kind captivity!

"Gallant captain, shew some pity
To a ladye in distresse;
Leave me not within this city,
For to dye in heavinesse:
Thou has set this present day my body free,
But my heart in prison still remains with thee."

"How should'st thou, fair lady, love me,
Whom thou knowst thy country's foe?
Thy fair wordes make me suspect thee:
Serpents lie where flowers grow."—
"All the harm I wishe to thee, most courteous knight,
God grant the same upon my head may fully light.

"Blessed be the time and season,
That you came on Spanish ground;
If our foes you may be termed,
Gentle foes we have you found:
With our city, you have won our hearts eche one,
Then to your country bear away, that is your owne."

"Rest you still, most gallant lady;
Rest you still, and weep no more;
Of fair lovers there is plenty,
Spain doth yield a wonderous store."—
"Spaniards fraught with jealousy we often find,
But Englishmen through all the world are counted kind.

"Leave me not unto a Spaniard,
You alone enjoy my heart;
I am lovely, young, and tender,
Love is likewise my desert:
Still to serve thee day and night my mind is prest;
The wife of every Englishman is counted blest."

"It would be a shame, fair lady,
For to bear a woman hence;
English soldiers never carry
Any such without offence."—
"I'll quickly change myself, if it be so,
And like a page I'll follow thee, where'er thou go."

"I have neither gold nor silver
To maintain thee in this case,
And to travel is great charges,
As you know in every place."—
"My chains and jewels every one shal be thy own,
And eke five hundred pounds in gold that lies unknown."

"On the seas are many dangers,
Many storms do there arise,
Which wil be to ladies dreadful,
And force tears from watery eyes."—
"Well in troth I shall endure extremity,
For I could find in heart to lose my life for thee."

"Courteous ladye, leave this fancy,
Here comes all that breeds the strife;
I in England have already
A sweet woman to my wife:
I will not falsify my vow for gold nor gain,
Nor yet for all the fairest dames that live in Spain."

"Oh how happy is that woman
That enjoys so true a friend!
Many happy days God send her;
Of my suit I make an end:
On my knees I pardon crave for my offence,
Which did from love and true affection first commence.

"Commend me to thy lovely lady,
Bear to her this chain of gold;
And these bracelets for a token;
Grieving that I was so bold:
All my jewels in like sort take thou with thee,
For they are fitting for thy wife, but not for me.

"I will spend my days in prayer,
Love and all her laws defye;
In a nunnery will I shroud mee,
Far from any companye:
But ere my prayers have an end, be sure of this,
To pray for thee and for thy love I will not miss.

"Thus farewell, most gallant captain!
Farewell to my heart's content!
Count not Spanish ladies wanton,
Though to thee my love was bent:
Joy and true prosperity goe still with thee!"—
"The like fall ever to thy share, most fair ladie."

That this striking ballad should have been a favourite wherever it was known, we do not wonder. Whether viewed as a picture of human emotion, under circumstances applicable to all times, or as a noble and discriminating tribute to the English national character of the seventeenth century, it is, to our minds, one of the most remarkable and perfect compositions of its class. We see embodied in it the characteristic features, and the dominant influences, of the country and the time. Here, as in a miniature, we have portrayed the love of adventure, the spirit of honour and bravery; that respect for engagements, that deep-rooted feeling of religion, those 'high thoughts seated in hearts 'of courtesy,' (to borrow an expression from Sydney,) which the imagination delights to associate with this glorious period of our annals. We can trace in every line the pride of country naturally springing from the dignified position then occupied by England, and stamping a feeling of power and self-respect on every heart conscious of belonging to

'The inviolate island of the sage and free,
The beautiful, the brave, the lords of earth and sea.'

But this pride does not betray itself in vain boasting, in vulgar triumph, or unfair depreciation of opponents. It does ample justice to the high qualities of its rivals;—satisfied that England does not require to lower the qualities of hostile nations, in order to elevate her own. We see it here tempered by a gentleness of manners, a forbearance and sympathy for others, which Chivalry had indeed theoretically advocated; but which the progress of literature, the general advance of intelligence, and the increasing stability of settled government, had for the first time reduced to practice,—so far, at least, as regarded the humbler classes of society; and all this deepened and adorned by a devotional spirit of humility towards God, contrasting beautifully with the lofty attitude which man maintains towards his fellow-men. In the earlier and ruder days of Chivalry, we have instances enough where a

Knight would peril his life for a noble; or where a successful Conqueror might veil his inward pride beneath a show of outward modesty, or an ostentatious disclaimer of all personal merit: but now only do we see the principles of Chivalry carried out into action in a sincere and catholic spirit; now only do we meet with instances like that of Sydney resigning the untasted water to a simple soldier on the field of Zutphen; or, amidst the tumultuous joy which followed the defeat of the navies of Spain, hear the voice of a nation, in a spirit of true humility, ascribing the triumph to that Great Being who had blown with His Winds, and they were scattered.

This, indeed, and not the age of Edward III., though adorned by the muse of Chaucer, and the glories of Crecy and Poitiers, is the true chivalrous period of England;—when all the best features of Chivalry had been retained, while its harsher traits had been shaded off and refined. It would almost seem, indeed, as if those emotions and actions which are the offspring of such a theory, grew more vivid and exalted during the reign of Elizabeth, from the latent but growing consciousness that the principles to which they owed their birth would soon cease to be a reality;—that the influence of Chivalry on society would soon and for ever disappear;—equally oppressed by the spirit of craft and low ambition which deformed the reign of James, the stern conflicts and absorbing interests of the civil wars, the puritanic gloom of the Commonwealth, or that selfish and heartless elegance with which the Restoration attempted to gloss over its vices and follies. And hence, as if on the eve of departure, it seemed to seize with a peculiar faith and intensity on the minds of all, as our hearts attach themselves with a fonder longing to beings and objects to which we know we are about to bid a final farewell.

This national ballad is conceived in the best and most liberal spirit of its time. It is not the mere chronicle of the ballad-monger,—vigorous and spirit-stirring, but one-sided and unjust,—as popular ballads generally are. It shows a power of conceiving and reconciling, in a spirit of generous accommodation and allowance, the contrasts of national character. 'The laurel meed of mighty conquerors' it claims, and justly claims, for those who had avenged the unsuccessful attempt of the Armada by the two successful descents on Cadiz and Vigo; but it accords to their Spanish opponents the honour of a brave resistance, and of that high-minded submission to misfortune, of which their Monarch—not unworthy in this respect of his great ancestry—had shown so noble a precedent when the tidings of the discomfiture of his gigantic armament had been communicated to him by Medina Sidonia.

The truth is, the minstrel has, in this instance, proved that he is also a dramatist—that he possesses the power of conceiving

and painting the human heart, placed in situations of a novel character, and under relations involving no ordinary delicacy and difficulty of management—where the slightest deviation into meanness of sentiment would have been absolutely fatal to the result—where a treatment of the subject, bold in the general conception, brief in its exposition, yet delicate and refined in the expression of the details—were all indispensable. Dramatic in its form—for it consists almost entirely of dialogue—it is equally so in substance; for it tells, in a few verses and by a series of situations, a complete and pathetic story. It deals in the outset with one of the greatest difficulties which poetry has to encounter;—namely, a case where the ordinary relations of the sexes are changed; and the lady, under the influence of an uncontrollable sentiment, takes upon herself the part of the lover. This was a favourite theme of our older dramatists—for poets love to contend with difficulty for difficulty's sake. Enamoured damsels, who take the initiative in love, and follow some faithless or unconscious Cavalier in the disguise of page or squire, are of frequent occurrence in the pages of Beaumont and Fletcher and others—borrowed in fact from the Spanish novels of the day, or the plays of Lope and his predecessors. But the frequent failures, or rather the generally repulsive effect of such situations, attest the hazard with which their representation is accompanied. Out of this difficulty, which places the heroine of the ballad in what seems, at first, a false position, with what skill and delicacy is she ultimately extricated! How naturally are we brought to see and feel that circumstances have justified, if not necessitated, an attachment upon her part, as pure as it is intense, and as unselfish as it is overmastering. Cadiz has fallen before the daring valour of the English arms. But the dreaded conquerors have proved themselves gentle foes—as courteous as brave. Property and female honour have been respected: after a brief alarm, grim-visaged war has smoothed his wrinkled front, and—save from the presence of noble and courtly strangers, and the pageantry rather than the more terrible accompaniments of war—Cadiz scarcely feels that it has been captured. The Spanish Lady, thrown into the hands of one of the English conquerors, has experienced the transition from fear to confidence, from confidence to gratitude, from gratitude to love; and unconscious of any obstacle to a return of attachment on his part, and on the eve of a dreaded separation, she, with all the warmth of a Spanish temperament, but with all the self-respect of a nature that knows its own worth, and feels itself entitled to *demand* affection in return,* reveals to him the secret of her heart.

* 'I am lovely, young, and tender,
Love is likewise *my desert.*'

If she urges her claim warmly and perseveringly, we make allowance for the surprise and disappointment of a feeling and noble nature, at suddenly encountering difficulty and evasion where there was reason to anticipate nothing but a correspondence of sentiment. But if a momentary impression is created, that her pleading is somewhat too warm and importunate, how completely is the impression removed by the manner in which she receives at last the tidings of her fate! She indulges in no passionate burst of grief, gives vent to no jealousy of her rival, utters no reproach, no remonstrance, where reproach would have been just; she yields with native dignity to what is inevitable; and seeks only the revenge of great minds, that of heaping benefits on those from whom injury has been received. The jewels, which she herself now lays aside for ever, she destines for her who unconsciously stands between her and her happiness; and her parting prayer is, that joy and true prosperity may be the lot of him who has tried her bosom with its bitterest pang.

Is there any thing in this picture of feeling, that appears indelicate, obtrusive, or unwomanly? Far otherwise, if we may trust our own impressions. For in our minds, the enamoured Spaniard—innocently pressing her suit upon her conqueror—in utter ignorance of his pre-engagement—awakens something of the same pure sympathy which is inspired, though undoubtedly in a higher degree, by the creations of Shakspeare;—as when, in the lonely Island, Miranda surrenders her maiden heart at the first summons to Ferdinand; or Juliet in the moonlit gardens of Mantua, spell-bound by the fascination of a first enchantment, seems to court the advances of passion, and to exult in the consciousness that her destiny is fixed at once and for ever.

Nor is the English Captain less naturally drawn, though, placed beside the Lady, he certainly appears at a disadvantage. For it is quite impossible to doubt that he had afforded her some foundation on which her fabric of romantic attachment had been reared. Separated from England, thrown into the dangerous position of protector to an amiable and lovely young woman, he has allowed his recollections of home, and his sense of duty, to be obscured by the attractions and the interest of the present. Yielding, as he thinks, to pity, he has forgotten that 'love is in the next 'degree;' till insensibly he has become entangled in a net, which it becomes daily more painful and difficult to rend asunder; and which it is impossible gently to untie. Sometimes we are not without our fears that the absent English wife will be the sufferer; at other times, we rather apprehend that the result will be a matrimonial compromise after the manner of the Count of Gleichen. But the poet, while he exhibits the natural weakness of his heart, brings out also the inherent nobleness of his nature,

when the crisis which drives him to reflection and resolution arrives; with pain to himself, with shrinking and reluctance, he declares the truth; but when, after exhausting every other objection, he does communicate the secret of his pre-contract, it is with a determination and fixed sense of duty, against which all the temptations of wealth, and the charms of beauty, are felt to be unavailing.

> 'I will not falsify my vow for gold nor gain,
> Nor yet for all the fairest dames that live in Spain.'

It is time, however, to turn to Lady Dalmeny's Illustrations of this fine specimen of the ballad literature of England in the sixteenth century. They are executed in outline merely, in the style of Retsch's Illlustrations of the Faust, and of Shakspeare; and appear to have been transferred to the stone with great spirit and skill by Mr Dickinson. The first feeling, we think, with which these Drawings will be regarded by the public, will be that of astonishment; for they display a mastery of art, a knowledge of composition, and a power of drawing, of which professed artists might be proud. Two, in particular, of the compositions which these Illustrations embrace—we mean the procession of the English troops through the streets of Cadiz, while fair ladies 'rain influence' on the conquerors from lattices and balconies; and the scene where the Lady is represented as following the cavalcade in the disguise of a page—are of great difficulty and complexity; and yet the former is the finest drawing in the volume,—the latter scarcely inferior. What eminently distinguishes these outlines is, their simplicity, their absence of theatrical display, the natural manner in which they tell their story,—communicating the sentiment of the ballad without feebleness, and yet without extravagance. One or two points we shall take the liberty of indicating, where, we think, simplicity is perhaps carried too far, or the composition is susceptible of improvement; but of the volume as a whole, and as the production of a Lady, not a professional student of art, it is scarcely possible to speak in too high terms;—either in regard to the spirit in which it has been conceived, or the taste and artistic skill with which it has been executed.

In the first plate, which represents the Lady seated, holding the Captain's hand in her's—not looking in his face, but gazing upward, 'with looks commercing with the skies,' and seemingly lost in some reverie of the fancy—the Lady is altogether exquisite. The sentiment expressed in the mild, dark, gentle countenance, is beautiful and touching; the arrangement of the form extremely graceful. The folding of the Captain's lower limbs, however, appears somewhat constrained: we wish they ad not been folded at all.

In the next plate we discover that the order has come to set the ladies free. The Captain holds the scroll in his hand, the Lady is at his feet in tears, one hand clasped in his, the other clinging, with a mute appeal, to his arm: a page stands by, resting his arm on his chair. Here, again, the Lady maintains her superiority: the attitude—the expression, agitating but not distorting the countenance—the tear trembling in the eye—the graceful fall of the draperies—impart an exceeding charm to this figure. The page, we think, should have been more in the background, and the Captain's left leg thrown out somewhat farther, to balance the action of his right shoulder and arm, and to avoid the parallelism of so many legs.

The third drawing, which represents the entrance of the English troops,

> 'Blessed be the time and season
> That ye came on Spanish ground,'

is, as we have said, the finest in the volume, so far as mere skill in composition is concerned. In the foreground, as if on part of a flat roof, are two ladies and a boy gazing on the English cavalcade as it passes along the narrow streets of Cadiz—(the lady in the centre exquisite in design;)—from a higher balcony leans down the heroine of the ballad—her eyes seem riveted on the English Captain, who is turning back his glance as if struck by her beauty. The whole of this composition, very difficult in its treatment, is, we must repeat, singularly graceful and successful.

The fourth plate may be called the pleading—

> 'Leave me not unto a Spaniard,
> You alone enjoy my heart.'

The Captain here stands somewhat awkwardly balanced on both legs. The Lady, as usual, beautiful. The figure in the chair—it may be supposed a female friend and confidant, (though how Lady Dalmeny is to answer to the commentators for her introduction into the ballad, we know not)—is extremely spirited.

Plate fifth.—The Lady in the disguise of a page following on foot the retreating English troops. Less interesting, so far as regards the expression of sentiment; of which, indeed, the scene scarcely admits—but well arranged, and drawn with equal grace and firmness.

Plate sixth.—'On the seas are many dangers.' The Captain has entered his boat; the vessel is seen in the offing; the Lady seeks to enter; he gently repels her advance. This we think the least successful of these designs. Even the Lady is less interesting than usual; the position of the Captain's left leg not a little awkward; the folding of the cloak upon his arm confuses the outline, and embarrasses the action. Had the cloak been

thrown carelessly on the seat of the boat, or thrown back from his shoulder by the wind, the composition would have been improved.

Plate seventh.—'On my knees I pardon crave for mine offences.' But the Lady is not on her knees. She is standing, engaged in detaching the chain from her neck, while the Captain looks on with a deep expression of pity and regret. Had Lady Dalmeny taken the situation as described in the ballad, and represented the Lady on her knees, the action of detaching the chain might have been just as naturally combined with that position; and the arrangement, we think, would have been more animated. But probably her reason for this variation from the text was, that in the next Plate, when the Lady is represented in the Nunnery, she is properly drawn in a kneeling posture before an image of the Virgin. This last drawing is simple, earnest, and grand in expression.

We have thus candidly pointed out a few particulars in which these beautiful drawings appear to us to be susceptible of improvement; but we cannot part from them without again expressing our strong sense of the good taste and just principles which have guided the pencil of the artist.

Lady Dalmeny appears to us to have formed a correct idea of the peculiar character which drawings in outline ought to possess. Deriving no aid from light and shadow, or from colour, and possessing little power of discriminating objects from each other when placed in different planes—for the gradation in the strength of lines affords but a very inadequate instrument of aërial perspective—the natural course of outline illustration is to avoid multiplication of figures or complexity of groups, and to rely for its effects on grandeur of form and simplicity of treatment. And, in truth, so much is the range of this species of drawings limited by the same principles on which sculpture relies for its impression, that without meaning to say that drawings in outline are to be treated exactly as designs for bas-reliefs, or circumscribed by the same boundaries as are applicable to sculptured groups, we certainly hold that they ought to possess something *of a statuesque character*. In this style we know nothing finer than Flaxman's Illustrations of Homer, Hesiod, and Dante. In the compositions from the Iliad and the Odyssey, or from ancient literature in general, this mode of treatment, indeed, is scarcely avoidable; for it is difficult to dismiss the recollections of sculpture when dealing with these classic and mythological subjects. But in those from the *Inferno*, where the range of subjects is far more extensive—where all ideas, grotesque, horrible, pathetic, or beautiful, find their representatives—with what a combination of *simple energy*, and yet *sculptural repose*, these conceptions are wrought out by Flaxman! The story is told with a straightforward truth, analogous to the

stern compression of the Florentine, and yet with a calm grandeur, which mingles beautifully the charms of classic composure with the deep interest of the romantic groundwork. Yet the influence of Flaxman on our Designers has been less obvious than that of others of far inferior taste and talent. The idea that his were the notions of a Sculptor rather than a Painter—an idea most mistaken and most injurious—seems to have stood in the way of their general popularity as illustrations.

If we say that, among our recent publications of this kind, the influence of Retsch is much more visibly to be traced than that of Flaxman—though grafted upon tastes derived rather from the study of the theatre, than of high art or simple nature—far be it from us to insinuate that, in imitating Retsch, our English artists have chosen a vulgar or unworthy model. We hold his claims in all honour, not only as an able designer, but as a man of great inventive fancy. In certain classes of subjects he is admirable. He revels in the witch element of Faust; the Fight with the Dragon tells its story as gracefully as graphically; and from the Fridelin and the Song of the Bell, many specimens of great excellence might be suggested. But in his most ambitious and trying attempt, the Illustration of Shakspeare, we must say candidly, we think he has failed; not indeed in comparison with English Illustrators who had preceded him;—for of the Shakspeare Galleries of our own country we entertain the very humblest estimate—but in comparison with himself. We say this, however, with the fullest admission of the beauty and even genius with which he has illustrated individual scenes. We entertain the liveliest recollection and admiration of that beautiful soliloquy of Hamlet, where deep thought is personified as visibly as in Michael Angelo's awful sitting statue of the Duke of Urbino, in the San Lorenzo at Florence. We have not forgotten the grandeur and pathetic effect of that noble composition, representing the burial of Ophelia:—the admirably contrasted groups; the struggling figures in the grave; the pale face of the dead, looking upward like the spirit of peace; tumult and conflict raging above,—tranquillity, how entire and enduring below! We mention these only as instances, for there are others of high excellence; but, on the other hand, there are also grave defects—obvious enough even in the Hamlet—becoming still more conspicuous in the Macbeth, and almost offensive in the Romeo and Juliet. In particular, the whole treatment of the supernatural scenes, both in Hamlet and Macbeth, we are constrained to regard as total failures. Compare, for instance, Retsch's treatment of the ghost scenes in Hamlet with that of Fuseli. We are no admirers of Fuseli's extravagances of form, but wherever he had to do with supernatural beings—from his early drawing of the sweeping spectre which shook the

mind of Dion, to his most impressive picture of the scene on the platform of Elsineur—bordering on the region of caricature, and yet not surpassing the boundary which separates the sublime from the ridiculous—he never fails to seize the mystery of the scene, and to impress the spectator with a congenial sense of awe and terror. Retsch, in delineating the buried Majesty of Denmark, gives us a vaporous, meaningless outline, with the bricks of the wall glaring through its form—a poor conceit—and withal, we suspect, contrary to the established laws and practice of the spiritual kingdom. Fuseli exhibits a perturbed spirit, striding along in a troubled atmosphere of storm and moonlight—visibly laden with a heavy secret—the visor pressing upon a brow on which imagination might suppose the thunder scars to be graven, but revealing eyes distended by suffering, and fraught as if with the gleam of penal fires.

We say therefore, with due respect for the genius of Retsch, that it is very questionable whether the popularity which his Illustrations have obtained, has been favourable to the development of English art; or whether the defects of his drawings, which are just as certain as their merits, have not been more imitated because they were more imitable than his excellences. There seems to us to be a strong tendency among our present illustrators in outline, to aim at effects which, in order to produce their proper expression, or even to be distinct or intelligible, require the aid of colour and light and shadow—to indulge in complicated groups, and to deal in violent attitudes and arrangements, which seem borrowed from theatrical *Tableaux*, rather than from the combined simplicity and variety of nature.

Above all, we regret to perceive of late the prevalence of a style to which we must apply a disagreeable epithet, but the only one which is justly applicable to it—that of *meretricious*:—revelling in a prodigality of ornament; courting a vicious and wanton luxuriance of form; and trafficking in a sickly sentimentalism of expression; which may, indeed, occasionally exhibit an artist's power of hand or command of form, but are, in truth, equally offensive to right feeling and good taste. These gaudy *Arabesques*—these tricks of attitude—these flaunting displays of nudity—will always, no doubt, find a certain public by whom they will be received with acceptance and popularity; they may be profitable to publishers and artists, but assuredly not to *Art*: for those who entertain a due sense of its high vocation, will regret to see its aim so mistaken, and its resources so misapplied; and they will regret this the more from the unquestionable talent with which these fantasied efforts are associated.

ART. III.—*Economie Politique des Romains.* Par M. DUREAU DE LA MALLE, Membre de l'Institut. 2 vols. 8vo. Paris: 1840.

NOTWITHSTANDING the imperfection of the records, the uncertainty of many of the events, and the frequent occurrence of large chasms in the narrative, Ancient History retains all its former interest, and perhaps has acquired new interest in the eyes of the present generation. This has been owing partly to the great ability and industry which have of late years been bestowed upon the investigation of antiquity in Germany, in France, and in this country; and partly, also, to a circumstance which seems at first sight likely to produce the very opposite effect. One great cause, as it seems to us, of the instructiveness of ancient history to a modern student, is the wide *difference* between the governments, manners, morality, and religion of the ancient and modern world. It is at once a useful and an agreeable task to trace the same human nature—with feelings, passions, interests, similar to our own—placed in circumstances wholly unlike those by which we are surrounded. So fundamentally dissimilar indeed are the political systems of the most civilized states of antiquity, and those of modern Europe, that perpetual attention is necessary in order to guard against the error of identifying institutions and events which have only a superficial resemblance, and which, when examined, turn out to have nothing in common but the outward form and appearance. There are, in particular, two characteristics of the ancient Communities which pervade every part of their political and social existence, and which can seldom be safely disregarded in instituting a comparison with modern history. These are, first, The existence, even in the most democratic republics, of a numerous class of *slaves*, who formed a large part of the population; and, secondly, The inability of the powerful conquering states to govern a large country *directly*, and the consequent system of governing new acquisitions of territory as *dependencies*. We shall have occasion, in the course of this article, to point out the importance of attending to *both* these characteristics, in reference to the question which we are about to consider.

We propose in this article to lay before our readers the best account which the extant information will permit, of the system pursued with respect to the supply of Corn in the states of Athens and Rome. We select this subject, not only because erroneous inferences as to the corn-laws of our own time have been drawn from the practice of these ancient states; but also because it is in itself curious and interesting.

Attica is a promontory about fifty-four miles in length, and with an area of only seven hundred square miles, equal to a moderate-sized English county. Its surface is mountainous and rocky, but it is situate in the neighbourhood of more fruitful regions. In the well-known introduction to his history, Thucydides states that Thessaly, Bœotia, and the chief part of the Peloponnese were fertile; but that Attica was an unproductive district, on account of the scantiness of its soil. Owing to the remarkable intelligence and practical energy of the Athenians, and the excellence of their political institutions, as compared with those of other Greek communities, their numbers and wealth increased and became great, notwithstanding the barrenness of their territory. In the prosperous times of Attica the population was about 520,000, of whom not less than 400,000 were slaves; which gives an average of about 700 inhabitants to a square mile. The population, however, was not equally diffused over the entire country, but a large part of it was collected in Athens, which, with its appendages, Pirœus, Munychia, and Phalerum, must have contained nearly 200,000 inhabitants.

In comparing the food of an ancient with that of a modern nation, it must not be forgotten how many articles, now in general consumption, were then unknown: bread, meat, fish, cheese, with some of the commoner garden vegetables; wine, milk, and honey—formed nearly the whole range of their diet, both solid and liquid. Tea, coffee, cocoa, sugar, spices, spirits, beer, butter, rice, potatoes, and oranges, as well as tobacco, were not consumed in ancient Greece or in Italy. From a very early time *wheat* and *barley* were the two sorts of grain used by the Greeks for food, as well as by the inhabitants of Palestine; oats and rye were not cultivated. The Athenians claimed the honour of having first made wheaten bread, and taught the use of it to mankind;—a topic derived from their mythological story, on which their eulogists were fond of dwelling; and in the historical age, the common or household bread of Athens was considered by *gourmands* as the best which was made in Greece. The staple article of food for the large population of Attica, and particularly for the slaves, who formed nearly four-fifths of the whole, was *wheaten bread*. The annual consumption of corn probably amounted to about 2,800,000, or 3,000,000 medimni, (556,638 quarters;) and we learn from Demosthenes, who appeals to the official record, that of this quantity about 800,000 medimni (148,437 quarters) were imported by sea from foreign countries,—one-half of the imports being obtained from the Black Sea.*

* Cont. Leptin, § 36-7. Demosthenes only refers to the corn im-

Strabo informs us that the Taurica Chersonese, now the Crimea, was the district on the Black Sea which supplied this corn: the flat part of this peninsula was, he states, exceedingly fertile in grain, yielding a return of as much as 30 to 1, and was inhabited by a more civilized race than the Nomads of the neighbouring region.* Pericles, in his funeral oration in Thucydides, extolling the power of Athens, says, that on account of its greatness and wealth all things were imported into it from all countries; and Demosthenes affirms that no other nation in the world consumed so large a proportion of imported corn as the Athenians.†

It was therefore natural, that in the unsettled and insecure state of Greece, both by sea and land, the supply of foreign corn should be a subject of constant solicitude to the Athenian people. This is one of the matters which Socrates lays before the youthful and presumptuous Glaucon, as necessary to be understood before he attempts to speak in the assembly, and to be a popular leader. 'You have doubtless,' he says, 'considered for how 'long a time the corn grown in the country is sufficient to feed 'the people, and how much is wanted in addition for the annual 'consumption; so that a scarcity could not take place without 'your knowledge, but you would be informed of its existence, 'and would be able to advise concerning the means of obtaining 'supplies, and thus render assistance, and save the state.'‡ 'With an importation equal to a third part of the consumption,' says Professor Boeckh, 'and in times of failure of the crops, 'even this being insufficient, a great scarcity must necessarily 'have arisen, if judicious arrangements had not been devised in 'order to prevent the occurrence of such an event. The ar'rangements for the supply of corn were therefore conducted 'upon a large scale; Sunium was fortified, in order to secure 'the sailing of the corn vessels round the promontory; armed 'ships convoyed the fleets laden with corn, as for example that 'from the Pontus: when Pollis the Spartan was stationed near 'Ceos, Ægina, and Andros, with sixty ships of war, Chabrias 'offered him battle, in order that the corn from Gerastus in 'Eubœa might reach the Piræus. The exportation of all grain 'was absolutely prohibited; of the corn which arrived from 'foreign parts in the harbour of Athens, the law required that

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ported by sea; so that some supplies may have been obtained from Bœotia, which he does not include.

* Strabo, vii. 4, p. 311.

† Thuc. ii. 38. Demosth. Lept. ubi. sup. et Conon. § 108.

‡ Xen. *Mem.* iii. 6. § 13.

'two-thirds should be brought into the city, and compliance with 'this regulation was enforced by the overseers of the harbour; 'that is to say, only one-third could be carried away to other 'countries from the port of the Piræus." * There were moreover various regulations, conceived in the spirit of our laws against forestalling and regrating, which were intended to prevent the corn-dealers from raising the price of grain. The quantity which a corn-dealer was permitted to buy was limited to fifty measures; and he was not allowed to sell the *medimnus* at a price exceeding that which he had given by more than an obolus. These regulations were, as was natural, perpetually violated in practice; public opinion, however, visited the evils of high prices and scarcity, whenever they occurred, on the heads of the corn-dealers; and the extant speech of Lysias is a curious record of the erroneous opinions which prevailed at Athens on this subject. The punishment for corn-dealers who violated the laws against engrossing was death; and Lysias states that many persons charged with this offence had been tried for their life and condemned. †

Corn was sometimes purchased at the public cost, or with money given voluntarily by private individuals to the state for the purpose. There were officers named Sitonæ, who superintended the purchases, and public granaries in which the corn was deposited. The corn thus procured was either sold at a low rate, or distributed gratis. Such distributions were not of very rare occurrence; one in particular which took place in 424 B.C., when five *medimni* were given to each citizen, is mentioned by Aristophanes in the *Wasps*, (v. 716.) Donations of corn were, likewise, sometimes made to the Athenian people by foreign princes and rich men: thus Leucon, king of the Bosporus, who reigned in the first half of the fourth century before Christ, furnished a large supply; and in late times, after Athens had lost its independence, Atticus, when resident there, made a distribution among the citizens, equal to a *medimnus* a head.

Such are the principal facts respecting the corn trade or corn-law of Athens, which have been preserved in ancient writers; but although they lie within a narrow compass, they are nevertheless sufficient to give a clear notion of the system. We may remark, first, that notwithstanding the frequent wars in which Athens was engaged, the general insecurity of Greece, the imperfection of agriculture, and also of navigation, the compara-

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* *Economy of Athens*, p. 81.

† See the speech of Lysias against the corn-dealers, § 22, 24.

tively limited circle from which supplies could be drawn, and the impolicy of the interferences with the freedom of trade which were intended to guard against high prices; no permanent difficulty arose from the dependence on foreign corn for a large part of the annual consumption. Attica was, during a long series of years, the most flourishing and commercial state of Greece. Its ships were in all the Greek ports; its silver coin, like the Spanish dollars, was in universal currency. The number of its slaves—the great test of abundant capital in antiquity—was immense. There is no trace of any economical evil having arisen to the Athenians from the extent of their imports of corn, notwithstanding the fears of a deficient supply which they constantly entertained. Though proverbially bad neighbours, their commercial dependence with respect to the supply of corn, did not enable their numerous enemies to derive any advantage from this apparent cause of weakness.

We may remark, secondly, that the notion of supporting the people at the expense of the conquered and subject communities, was familiar to the Athenians, and was reduced to a system by Pericles and his successors. A more striking example of this view cannot be given than the plan proposed in the *Wasps* of Aristophanes, which, though jocular in its expression and conception, is founded on a serious policy, well understood by his audience. 'We have,' says Bdelycleon, 'a thousand cities 'which now pay us the appointed tribute. If each of these 'was required to maintain twenty Athenians, twenty thousand 'citizens would live in all ease and luxury, enjoying themselves 'in a manner worthy of their country and the victory of Mara-'thon.'—(v. 707.*) We shall see presently that the Romans reduced to practice a similar plan for the maintenance of *their* poorer citizens, at the expense of the subject provinces. Plutarch, in his life of Pericles, says that this statesman corrupted the sober and industrious habits of the Athenians, by distributions of public money and allotments of lands in colonies—by public feasts, shows, and amusements; and that he adopted this course in order to exceed the private munificence of his political opponent Cimon: not being able to gratify the people from his own means, he had recourse to the public money.—(c. 9 and 11.) The policy which is here attributed on good authority to Pericles, was repeated, on a large scale, by the great party leaders and military commanders in the last years of the Roman republic;

* The number of citizens at Athens (*i. e.* of heads of families) was commonly taken in round numbers at twenty or thirty thousand.

when they obtained support, and rewarded their partisans and soldiers by largesses, distributions of plunder, public festivals and games, and allotments of land in colonies.

A practice of distributing corn among the citizens, either gratis or at a low price, similar to that which existed at Athens, was known to the Romans at an early date. During the first six centuries of the republic, when private fortunes were small, and the plunder of wealthy provinces had not furnished the means of supplying gifts to the people, these largesses were rare and limited in amount.* After a time, however, the distributions of corn, instead of being mere casual donations, assumed the form of a permanent legal provision for the indigent part of the free population of Rome; resembling, in the mode of its allowance, though not in the incidence of its burden, a *poor-law* such as exists in England and other modern states. In 639 A.U.C., (114 B.C.,) Caius Gracchus, then tribune of the people, carried a law that corn should be sold every month to the citizens at the nearly nominal price of five-sixths of an as for the modius.† This law was probably swept away with his other measures, when the aristocratical party regained the ascendancy, after his death in 632 U.C. But it was renewed from time to time; and in 682 U.C., (73 B.C.,) the *Lex Cassia Terentia* (so called from the Consul of the year) introduced the monthly distribution of 5 modii a-head. At length, in 695 U.C., (59 B.C.,) 65 years after the original proposition of Gracchus, the celebrated Clodius abolished the small payment, and rendered the distribution entirely gratuitous.

The system, unlike our poor-law of Elizabeth, advanced at a rapid rate. Cicero, in his oration against Verres,‡ speaks of 83,000 medimni (498,000 modii) of corn as being nearly equal to the maintenance of the Roman people for a month; assuming that the number intended by Cicero was about 250,000 modii, it would follow that 50,000 citizens then received the monthly distribution. The same policy was recommended by Cato after the suppression of the Catilinarian conspiracy, for the purpose of appeasing the people, and diminishing the power of Cæsar. The Senate then decided to assign an annual sum of 1250 talents

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* See M. Naudet, *Des Secours publics chez les Romains*, in the *Mémoires de l'Institut*, tom. xiii. pp. 13, 14.

† The modius was equal to something more than 1 gallon 7 pints; 5 modii are equal to about 1½ bushel. The as = 2 1-8th farthings.

‡ *In Verrem*, iii. c. 80. The date of this oration is 70 B.C.

for the monthly distributions of corn,* (63 B.C.) It was the policy of all the party leaders at this time—which they bequeathed as a fatal legacy to the imperial government—to divide the spoils of conquered provinces amongst their adherents; to enrich their partizans at the public expense; and to prevent discontent by lavish gifts and distributions. Julius Cæsar, when desirous of restoring peace to the Roman people, and putting an end to their intestine troubles, is described by Lucan as perceiving that the most effectual means was to purchase their obedience by gratuitous supplies of food, and thus to avert the desperation produced by hunger:—

> 'Curus et irarum causas et summa favoris
> Annona momenta trahi. Namque asserit urbes
> Sola fames; sumtusque metus, cum segne potentes
> Vulgus alant. Nescit plebes jejuna timere.'†

But Cæsar was aware of the dangerous tendencies of this policy, and did not wish to carry it further than the purposes of his ambition demanded. Accordingly, when, as Dictator, he took measures for the settlement of Italy after the anarchy of the civil wars, he made a census of the free inhabitants of Rome, with a view to regulating the receipt of public corn. He then found that the number of poor citizens who received the monthly allowance was 320,000, which he reduced to 150,000. These he formed into a permanent roll or list; and in order to prevent assemblages of the people for the purpose of revising the list, he ordained that the vacancies caused by death should be annually filled up by the Prætor Urbanus.‡ Cæsar was enabled to make this great reduction in the number of the city paupers by sending 80,000 citizens into colonies beyond the sea, and by assigning to others lands in Italy. The limit fixed by the Dictator Cæsar for the number of corn-receivers was, however, not observed; and Augustus restricted it to 200,000.‖ This ruler likewise wished to make the distribution once in every four months; but he yielded to the desire of the people, that the monthly distribution should be retained.§ He had, indeed, been desirous of abolishing altogether the system of corn-distributions, on account of its baneful influence upon Italian agriculture.¶ Assuming that the share of each

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* Plut. *Cat.*, c. 26; *Cæs.*, c. 8.

† III. 55—8. By *asserit* is meant *asserit in libertatem*. Compare Ovid, *Amor.* III. 11, 3. 'Scilicet asserui jam me, fugique catenas'

‡ Suet. *Cæs.*, c. 41; Dio Cass. xliii. 21.

§ Dio Cass. lv. 10. § Suet. *Oct.*, c. 40. ¶ Ib., c. 42.

recipient was 60 modii a-year, the annual distribution of corn to the poorer inhabitants of Rome, as fixed by Augustus, was 1,200,000 modii, or 35,156 quarters.

The persons who received this allowance all belonged to the *Plebs Urbana*, the commonalty of Rome, domiciled within the legal boundaries of the city. Senators and Knights on the one hand, and foreigners and slaves on the other, were excluded from the largess. The allowance appears to have been made to all the *male* members of the family above the age of five or six; *females* were not reckoned. There is no precise account of the degree of poverty which entitled a person to obtain the monthly gifts of corn; but they were probably intended as a relief from actual starvation; for, at times of dearth, corn was sold at reduced prices by the government, in addition to the gratuitous distributions. Destitution, not moral character, was the title to the receipt of this public bounty.* When a person had once been admitted on the list, his name appears to have remained on it for his life. He received from the proper authority a corn ticket—*tessera frumentaria*—upon the production of which his portion was measured out to him. As might be expected, these allowances were often obtained fraudulently; and the Theodosian Code contains several provisions imposing penalties upon freemen and slaves for this offence.

As the pauper-citizens who received corn were all inhabitants of Rome, we are naturally led to enquire what proportion they bore to its *entire* population. The enumeration of an entire people, familiar as it now seems to us, is a comparatively modern practice. The most civilized states of Europe did not attempt it until the end of the last century. The first complete census of England was made in the year 1801. The Romans, indeed, were from an early period in the habit of making a quinquennial census of their male citizens of military age; and at the same time, of taking the value of their property, in which a list of the slaves of each citizen was included. But, although they thus had the materials for a nearly complete enumeration both of freemen and slaves, it never seems to have occurred to them to count the *entire* population of Rome or Italy. The ancients no more thought of classing the slaves with the citizens, and forming them into one total sum, than of reckoning the horses and cattle with them. With one or two exceptions, no ancient writer, so far as we can remember, states the total population of any city

* 'Frumentum publicum tam fur quam perjurus et adulter accipit, et sine delectu morum quisquis civis est.'—Seneca, *de Benef.* iv. 28

or country, including both freemen and slaves. In like manner, Aristotle, in speaking of a majority of the people as being sovereign in a democracy, omits all mention of the slave class, as being wholly without the commonwealth.

The most extravagant computations of the population of ancient Rome have been made by modern scholars. It has been placed at four, six, and even eight millions. Gibbon, by a more moderate estimate, reckons it at 1,200,000.* M. Dureau de la Malle has gone to the opposite extreme, and makes it amount only to 562,000.† There is no direct statement of the numbers of its inhabitants, and we are thus driven to indirect arguments, which are subject to much uncertainty, and can only lead to an approximate result. The two most competent judges, however, among those who have recently investigated the subject, viz. the Chevalier Bunsen, and Professor Hoeck, the author of a history of the later Republic and Empire, nearly coincide in their estimates. Both these writers found their calculations mainly upon the numbers of the *Plebs Urbana* to whom Augustus gave largesses, as reported in the inscription of Ancyra. M. Bunsen thinks that the entire population cannot have been much under *two millions*.‡ Professor Hoeck, resting his computation upon a different item of the same monument, conceives the population of Rome, in the time of Augustus, to have been composed as follows :‖—

The Senatorial and Equestrian orders, . .	10,000 souls
Their slaves, ...	100,000 ...
The Peregrini, ...	50,000 ...
Their slaves, ...	100,000 ...
The military in the city, ...	15,000 ...
Their slaves, ...	15,000 ...
The Plebs Urbana, ...	1,250,000 ...
Their slaves, ...	265,000 ...
Public slaves, ...	100,000 ...
Total population of Rome, . . .	2,265,000 souls

* *Decline and Fall*, c. 31. Mr Burgess, *Topography and Antiquities of Rome*, vol. ii. p. 326, computes it at 1,164,000, nearly agreeing with Gibbon.

† Tom. i. p. 403. The erroneousness of this conclusion is shown by Hoeck, l. ii. p. 383, and Zumpt, *Über die Bevölkerung im Alterthum*; in the *Berlin Transactions* for 1840, p. 61.

‡ *Beschreibung von Rom*, vol. l. p. 184. This estimate is confirmed by the approbation of Zumpt, ib. p. 59.

‖ R. G. vol. i. Part ii. p. 390.

According to this estimate, the free population of Rome, in the early part of the Imperial period, would have amounted to 1,325,000; and the slaves to 940,000. It may seem improbable that the number of the free class should have exceeded that of the slaves; particularly when we advert to the authentic Census of Attica, and to the well-known anecdote reported by Seneca, that when it was proposed to assign a distinctive dress to the slaves, the plan was rejected on account of the danger to which the citizens would be exposed, if their *slaves began to count them.** It is however to be borne in mind, that the free class contained its natural proportion of women and children; whereas the slave class, being formed chiefly by importation, contained an undue proportion of adult males. The distributions of corn, moreover, tended to maintain in Rome a large body of pauper-citizens, who could have kept scarcely any slaves.

Although it may at first sight appear incredible that the population of ancient Rome should have at any time exceeded that of modern London, we are inclined to think that the above estimate is not very far from the truth. It is corroborated by several well-attested and certain facts. We know from the authentic testimony of an official topography of the city, made in the fifth century, that Imperial Rome then contained 1790 *domus* and 46,602 *insulæ*.† The former were the houses of the rich, with a colonnade dividing them from the street, and a large internal court. The latter were the dwellings of the common citizens, and were so called because each building was *insulated* by an interval of five feet in width from the adjoining houses. Their height was in general great; they probably consisted for the most part of six stories—the lower story being built of stone, the middle of unburnt brick, and the higher of wood. The lower part of the house, which opened directly upon the street, was in most cases used for shops; the upper stories were divided into separate apartments. On account of their great height, and the imperfect nature of their construction, the falling of houses was a common occurrence in Rome; and Augustus, on this account, limited their height to seventy feet. The streets of Rome, before the Neronian conflagration, were narrow and crooked; and as the houses were lofty, as the

* Apparuit quantum periculum immineret, si servi nostri numerare nos cœpissent. *De Clem.* i. 24.

† In Muratori's *Inscriptions*, vol. iv. p. 2134.

rooms of the ancients were small, and as the slaves were doubtless stowed away in any corner or passage, the population crowded into the 46,000 *insulæ* must have been very great. Hoeck supposes that each of these houses contained on an average thirty freemen and fifteen slaves; the average number in each *domus* he reckons at six persons of senatorial or equestrian rank, and sixty slaves. These numbers appear to be within the limits of probability; although the average population of houses in modern cities is doubtless considerably smaller. It is, however, to be borne in mind, that this enumeration is probably as late as the fifth century, when Rome had certainly begun to shrink,—having lost a considerable part of her power and population.

The circuit of Rome in the time of Vespasian was ascertained, by actual measurement, to be thirteen and one-fifth Roman miles.* As the chief part of this area was covered with houses of several stories, we see no reason why the large population which we have mentioned should not have been contained in it. The circuit of London is not well defined, but it may be estimated at about fifteen miles. Dinocharès, the architect who laid out the plan of Alexandria, assigned to it a circuit of fifteen miles;† but there is no proof that the whole of this area was ever covered with houses. A fifth part of the space was, indeed, at the beginning assigned to the royal palace. The free population of Alexandria, when it was visited by Diodorus, in 58 B.C., amounted, according to the statement of the keepers of the census, to more than 300,000; which implies a *total* population of at least 600,000 souls. If we suppose that free children were not included in this number, it would be still greater. Although Alexandria was a very great and populous city, and second only to Rome, still it *was* second to Rome. Carthage, the ancient rival of Rome, is stated at the beginning of the Punic wars to have contained a population of 700,000 souls.‡ Seleucia is said to have contained 600,000 inhabitants.§ The superiority of Rome to all other cities of the ancient world, in magnitude and population, seems to have been an admitted fact in antiquity.

There are likewise other indisputable facts which tend to show the great size and populousness of Rome. At the Neronian

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* Plin. H. N. iii. 9. See Bunsen, vol. i. p. 192. The Roman mile was about 142 yards less than the English mile.

† Plin. H. N. v. 11. ‡ Strabo, xviii. 3. § Plin. H. N. vi. 30.

conflagration, the city was in flames for six days and seven nights; the fire then ceased, but broke out again, and lasted for some time longer. Out of the fourteen regions into which Rome was divided, three were wholly, and seven nearly, destroyed, but four remained entire.* Now, when we consider that the houses were high, with the upper stories chiefly of wood, and the streets narrow; and when we compare the time during which the conflagrations of other large towns have lasted, we are compelled to suppose that the city at that time contained a vast population. The fire of London began in the night of Sunday, and lasted till the following Friday. Moscow began to burn on the night of the 14th of September, and the conflagration lasted till the end of the 19th. The fire raged only for three days. No other great city is recorded to have burnt continuously for so long a time as Rome.

Another proof of the populousness of Rome is furnished by the large numbers of its inhabitants who are said to have been killed by different epidemic diseases. Thirty thousand funerals are stated to have been caused by the pestilence of one autumn, in the time of Nero.† In 77 A.D., under Vespasian, a fearful pestilence prevailed, during which nearly 10,000 deaths are stated to have been for many days entered in the public register.‡ Dio Cassius speaks of having witnessed a plague, during the reign of Commodus, of which more than 2000 persons often died at Rome in a day.‖ Trebellius Pollio, in his *Life of Gallienus*, states that 5000 persons died of the plague in one day, apparently at Rome.§ If these numbers are compared with the mortality caused by plague or cholera in modern towns, they will be found to imply an immense population.

The enormous capacity of the buildings destined for the public shows, is a further unequivocal evidence of the populousness of Rome. Marcus Scaurus, Edile in 60 B.C., built a wooden theatre, capable of containing 80,000 persons.¶ The theatre of Pompey, which was finished in 55 B.C., had, according to Pliny, ample space for 40,000 spectators.** The theatre of Balbus, built in 14 B.C., though the smallest in Rome, could contain 11,510 persons.†† The theatre of Marcellus, built by

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* Tacitus, *Ann.* xv. 40. Suet. *Ner.* c. 38. Compare Bunsen, vol. i. p. 85.

† Suet. *Ner.* c. 39. ‡ Clinton's *Fasti Romani*, vol. i. p. 69.

‖ lxxii. 14. § c. 5. ¶ Plin. H. N. xxxvi. 24, § 7. ** *Ibid.*

†† According to the Regionary, *Reg.* ix. See Bunsen, iii. 3, p. 60.

Augustus in 13 B.C., contained 20,000, the Odeum 10,600, and the Stadium of Domitian, 30,088 places.* The Colosseum, begun by Vespasian, the gigantic remains of which are an extant and visible proof of the vast population of Imperial Rome, is stated by the Regionary (*Reg.* iii.) to have contained sitting-room for 87,000 spectators. Mr Burgess thinks, that reckoning those in the upper gallery and in the arena, it may sometimes have included within its ample circuit as many as 100,000 persons.† The Circus Maximus, according to Dionysius, could accommodate 150,000, according to Pliny, 260,000 spectators.‡ Mr Burgess, judging from its dimensions, estimates the number at 200,000.‖ Pausanias, in his 'Description of Greece,' states that the Roman theatres far exceeded in magnitude all others in the world.§ The great exhibitions in the amphitheatres and circus, or Campus Martius, at Rome, were doubtless attended by a large portion of the inhabitants. Suetonius mentions, that, on certain occasions of this sort, Augustus had distributed guards about the city, lest the streets should be insecure, on account of the small number of those who remained.¶ We are told by Tacitus, that when two chiefs of the Frisians were at Rome, in Nero's time, and were taken about to see all the sights which were shown to barbarians, they entered Pompey's theatre, in order to behold the greatness of the people.** The public exhibitions at Rome were, however, not like the Olympic festival, which was common to all Greeks; they were intended exclusively for the population of the city. Now, as the public games were destined merely for the citizens, and slaves could only have been admitted as the attendants of their masters or mistresses; and as the children, the aged, the sick, the busy, and the indifferent, must always have formed a large number who did not partake in the amusement, it is manifest that a body of citizens which could furnish 200,000, or even 100,000 spectators, must have been immense. The only parallel which modern cities afford is that of the Bull-rings in Spain. The *Plaza de Toros* at Madrid can contain 12,000 spectators,†† and the population of Madrid is about 200,000 souls; that is to say, accommoda-

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* *Reg.* ix. Bunsen, ib. p. 472.

† *Topography and Antiquities of Rome*, vol. i. p. 243. Compare Bunsen, iii. 1, p. 333.

‡ Dion. Hal. iii. 68. Plin. *H. N.* xxxvi. 24. § 1.

‖ Vol. ii. p. 186.

§ II. 27. § 5. ¶ *Oct.* c. 43. ** *Ann.* xiii. 54.

†† See Mr Ford's *Handbook for Spain*, vol. ii. p. 738.

tion is provided for about 1-16th of the population. At Rome the entrance was free, whereas at Madrid a small payment is required; on the other hand, in the case of Madrid, no deduction is to be made for slaves. If, however, we apply this proportion to the number of places in the Circus Maximus (200,000), we obtain for the entire population of Rome more than three millions. Assuming that the free population of Rome was 1,200,000, the Circus Maximus had places for a sixth, and the Colosseum for a twelfth of this number. At present, the *entire* population of Rome, including both old and young, as well as that class who in antiquity were slaves, could not fill the Circus Maximus, and could nearly be compressed into the Colosseum.*

Owing to the discordance of the opinions respecting the population of ancient Rome, and the direct bearing of the subject upon our inquiry, we have stated somewhat fully our grounds for adopting an estimate which makes it exceed two millions. We hope likewise to show presently, that this high number is consistent with the peculiar state of Rome, both political and economical.

The system of gratuitous distributions of corn to the populace of Rome, which had been established by the party leaders in the later Commonwealth, as a means of rewarding followers and appeasing adversaries, was, as we have seen, continued by Augustus, against his convictions and wishes. It became an integral part of the administration of the Imperial government, as appears from Pliny's Panegyric of Trajan.† Severus added to the corn a ration of oil, which was maintained by his successors.‡ This Emperor left at his death a supply of corn for seven years, at the rate of 75,000 modii a day—reckoning only the city; ‖ of oil he left a supply sufficient for five years' consumption in all Italy.§ Aurelian, before his expedition into the East, promised the people a largess of crowns of two lbs., if he returned a conqueror. The people, probably thinking that Asia was an El Dorado, were sanguine enough to expect that these would be crowns of *gold*. Aurelian fulfilled his promise by giving *wheaten loaves*, baked in the form of crowns;¶ and from this time the government seems to have distributed bread instead of corn. This Emperor likewise added a ration of pork to

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The system of gratuitous distributions continued under the later Emperors, though with occasional interruptions, caused by anarchy and confusion. At the transfer of the seat of government to Constantinople, it was carried over, together with the other Roman institutions, to that new capital of the Empire: the daily distribution, under Constantine, is stated to have been 40,000 measures. This Emperor, in order to encourage the building of houses in his new capital, assigned the allowance to *householders*; the privilege attached to the occupier of the house, and was not personal.

From an early period, the supply of corn at Rome was considered a duty of the government. When prices were high, instead of accusing the corn-engrossers or bakers, the people blamed the magistrates or the Emperor. In the reign of Tiberius, tumults in the theatre arose from this cause, which he repressed with severity, shewing, at the same time, that he had procured from the provinces larger supplies of corn than Augustus. During a similar scarcity, Claudius, though exerting himself to obtain importations of corn, was assailed by the mob in the Forum, and pelted with fragments of bread. With respect to the food of the people, 'it was,' says M. Naudet, 'the 'constant maxim of the Roman administration to provide for 'their wants by taxes or forced sales; to do every thing by 'itself, and never to rely upon the assistance of trade.'† To such an extent was the government in the habit of acting the part of a Commissariat for the citizens of Rome, that it frequently sold corn at reduced prices to persons who were not on the gratuitous list; and there is often much difficulty in distinguishing between its sales to the public at large, and its donations to the state paupers. The care of the *Annona*, or the provisioning of the people, had under the Republic been intrusted to various officers, ordinary and extraordinary. At

* *Id.* c. 48. 'Qui dixisse fertur, si et vinum populo Romano damus, superest ut pullos et anseres demus.' At a later period, however, wine was procured by the government, and sold to the people of Rome at a reduced price.—Walter, *Geschichte des Röm. Rechts*, p. 315.

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length, Augustus appointed a permanent *Prefect of the Annona*, whose office continued during the whole of the Empire. It was his duty to obtain supplies from the provinces, and for this purpose he corresponded with the provincial governors, and made the necessary arrangements for the transport, reception, custody, and distribution of the corn. The corn was not in general obtained by purchase, but was levied from certain provinces as a *tax* or *tribute*, and by the agency of the Roman officers remitted to Rome. The most important of these provinces were Sicily, Africa, and Egypt. The quantity to be furnished by each province (called its *canon*) was determined; but besides this quantity, it was expected to make occasional *gifts* to Rome.* Moreover, it might be required to furnish an additional supply on payment.† In the time of Cicero, as we learn from his *Verrine* oration, the quantity of corn procured from Sicily was large, and this island was, in the Augustan age, called the granary of Rome.‡ Sardinia also contributed something. Afterwards, the chief supplies were obtained from the province of Africa (the country round ancient Carthage) and Egypt. Josephus states that Egypt furnished corn for four, and Africa for eight months.‖ From Aurelius Victor we learn that twenty million modii (585,937 quarters) were, in the time of Augustus, annually imported into Rome from Egypt alone.§ After the transfer of the seat of Empire, Egypt was assigned to Constantinople, and Africa to Rome. Each of the capitals had a certain quantity fixed for its supply, which was called *canon urbicarius*.

But it was not sufficient to obtain corn as a tribute from the subject provinces; measures were necessary for its transport to Rome. It appears to have been the duty of the provincials—at least it was so ordained in Sicily—to convey the corn to the seashore at their own expense. The conveyance by sea was the care of the Roman authorities. At first, this duty seems to have been performed by merchants, who undertook it voluntarily. The Emperor Claudius, however, began to give bounties and privileges to shipowners, to secure the transport of the corn. In later times, this obligation had devolved on the corporation of *navicularii*, or shipowners. This corporation enjoyed numerous privileges, but every legal stratagem and disqualification was employed in order to keep the members at their post,

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* Called *oblationes*. These *free gifts* remind us of the monkish verse, 'Cum rex implorat, precibus præcepta colorat.'

† Called *Indictio*.

‡ ταμιεῖον τῆς Ῥώμης.—Strab. vi. p. 273.

‖ *Bell. Jud.* ii. 16. § 4.

§ *Epit.* c. 1. § 6.

and to prevent them from evading the heavy burdens to which they were subject. It was their duty to furnish and maintain ships for the transport of the corn. They gave a receipt for the corn shipped in the province, and were bound, upon their personal responsibility, to produce the specified quantity at the port of Rome. For losses from shipwreck, or other accidents on the voyage, they were answerable; and it was necessary to prove, before a public magistrate, that the cargo had not perished through the fault of the navigators. This inquiry was attended with vexatious forms and delays, and strict evidence was required in order to exonerate the party liable. Valentinian enacted that half the crew should be put to the torture. His son was satisfied with the torture of two or three sailors, particularly the pilots. In case all the crew had perished, the children and kinsmen of the shipowner were put on their trial. There was likewise a power of seizing any large vessel in a corn province, for the purpose of transporting the corn to Rome. Such were the measures to which the Roman government were driven, by violating the natural laws of commerce, and undertaking to act the part of a Commissariat for the city of Rome.

When the corn had been delivered at Ostia, the proper authorities received it, and verified the quantities; it was then sent in boats up the Tiber, and distributed among the 300 granaries of Rome.

Having given a general sketch of the origin, progress, and character of the system which the Roman government pursued with respect to the supply of corn, we will attempt to show, as far as our limits and purpose will permit, what were its most important *effects*.

In the first place, it may be observed, that the Roman Corn Law was, in fact, a Poor-Law. The existence of slavery seems to render a poor-law both unnecessary and impracticable; unnecessary, because the working-classes are slaves, and therefore maintained by their masters; impracticable, because an inducement is afforded by it to emancipate old and unserviceable slaves, in order to entitle them to public relief. The number of needy freemen at Rome was, however, sufficient to render them dangerous to the government, and to create a necessity for appeasing them by donations of food. Notwithstanding the existence of slavery in the ancient Republics, there was always a large body of indigent citizens—a wretched and hungry populace, as Cicero calls it*—who exercised a most important influence upon

* 'Misera ac jejuna plebecula.'—*Ad Att.*, l. 16, § 6.

the character and administration of the government. Every reader of Aristotle's 'Politics' knows, that all his characteristics of Democracy are founded upon the preponderance and supposed interests of the poorer section of the citizens. This class existed in Rome, as in other less powerful commonwealths. Philip, during his tribuneship in the year 105 B.C., said that there were not 2000 men of property in the state.* From its first introduction, therefore, the system of free gifts of corn increased rapidly. The feeling which led to its extension is illustrated by an anecdote of Piso, surnamed *Frugi* (the honest), who had always spoken against the corn law of C. Gracchus. After the law had passed, Gracchus, seeing him standing among those who had come to receive their allowance, reproached him for his inconsistency. Piso's answer was, that he should not wish *his own* property to be divided amongst the citizens; but if it *were* so divided, he should claim his share.† The system of corn distributions was reprobated by Cicero, on account of its tendency to destroy industry; and of its large drains upon the treasury.‡ Both Cæsar and Augustus diminished the number of the recipients of the public corn; but the improvident system, which they could not eradicate, was naturally continued by their successors. With respect to the emancipation of slaves, in order to entitle them to receive the public corn, it seems that the existence of a permanent list, and the examination which took place before a new name was admitted upon it, afforded a sufficient security against this abuse. We read, however, that many manumissions were made for the sake of extraordinary largesses of Pompey and Augustus.‖

Not only was the Roman corn-law in fact a poor-law, but it was a *partial* poor-law. It was confined to the city of Rome. The distributions of corn were made only to the indigent freemen of the capital. Italy at large derived no benefit from them. Sicily is called by ancient writers (as we have already remarked) the granary, not of *Italy*, but of *Rome*. This restriction of the

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* Cicero *de Off.*, ii. 21. Cicero blames the statement for its anarchical tendency, but does not question its *truth*.

† Cic. *Tusc. Disp.*, iii. 20.

‡ 'Frumentariam legem C. Gracchus ferebat. Jucunda res plebi Romanæ: victus enim suppeditabatur large sine labore. Repugnabant boni, quod et ab industria plebem ad desidiam avocari putabant, et ærarium exhauriri videbant.'—*Pro Sextio*, c. 48.

‖ Dio Cass. xxxix. 24. Suet. *Oct.* c. 42.

public bounty tended to give a disproportionate size to the capital, and to attract to it a worthless and needy multitude from all parts of Italy and the Empire.

Above all, it was a poor-law derived, not from local funds, or even from a taxation common to the Empire at large, but from the tributes of the provinces. The corn was not purchased from the proceeds of a tax levied on Rome or Italy: it was not a poor-law in which the wealthier inhabitants of a district contributed from their surplus means to the maintenance of their poorer neighbours. It was a poor-law in which the populace of the conquering city were maintained at the expense of the conquered countries.* It was as if several hundred thousand of the poorer classes of Paris had, during the government of Napoleon, been supported by taxes levied in Italy or Germany; as if the populace of Madrid had, in the sixteenth century, been fed at the cost of Flanders and the Indies; or as if the paupers of Vienna were maintained by a poor rate collected in Lombardy. This poor-law therefore, had neither, on the one hand, the spirit of charity, nor, on the other, the safeguards against abuse which belong to such a poor-law as that which exists in Great Britain. It was a contribution wrung from the weak by the strong; not an assistance given voluntarily by the richer to the poorer classes. Being a tribute exacted by the dominant part of the Empire, and being used for the purpose of appeasing the hungry populace of Rome, it grew rapidly, and there was little inducement for those who administered it to check its increase.

On the oppression of the provinces, which this system naturally produced, it is needless to dwell: what it was in Sicily under one Pro-Consul, we know from the *Verrine* orations. Tacitus, too, in his 'Life of Agricola,' describes several vexatious requisitions of the provincial governors, with respect to the supply and delivery of corn, which were imposed in order that bribes might be given for their remission.† The regulations for the transport

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* Claudian, in his poem on the Gildonic war, represents Rome as saying that the provinces of Africa and Egypt were assigned for her food as a reward for her ancient conquests and exertions.

'Tot mihi pro meritis Libyam Nilumque dedere,
Ut *dominam plebem* bellatoremque senatum
Classibus æstivis alerent, geminoque vicissim
Litore diversi complerent horrea venti.'—V. 52-5.

It seems that there was great difficulty in obtaining supplies during winter.—*Suet. Claud.* c. 18.

† C. 19.

of the grain by sea, likewise prove the violent and despotic spirit which pervaded every part of the system.

Under the influence of the causes which we have described, Rome became (what London has been unjustly called) *a gigantic wen:* it was in truth an unnatural growth,—a vast conflux of people brought into one spot by a vicious and oppressive system. Its population consisted, in great measure, of province-fed paupers and slaves. How unsound a state of things is implied in these few words, as compared with that of a large capital in a modern European state; and how erroneous the view of those who consider the social happiness of Rome at any period of the Empire, as superior to that of the civilized nations of our own time! Such being the inducements which existed for a residence in Rome, and such being the means by which the less wealthy part of its inhabitants were fed, we are enabled to understand how its population might have reached the magnitude which we have stated above, and may be prepared to admit that the estimate of two millions is not incredible.

The Roman corn-law was, however, not merely a poor-law. It exercised a most important influence upon the supply of food for the capital. The government undertook to act the part of a Commissariat for the majority of the free population of Rome. They likewise rendered themselves responsible to a certain degree for the supply of corn, to those who were not inscribed Roman paupers, and to the rest of Italy. For accomplishing this purpose, they relied upon the tributes of the corn provinces. The first consequence of this system was the *ruin of Italian agriculture.* The natural market for the corn of the Italian farmer was, to a great extent, destroyed by the artificial supplies derived from the provinces. Hence (as M. Dureau de la Malle has remarked*) the history of the seventh and eighth centuries of Rome presents this singular contrast,—that the agriculture, the population, and products of Italy, diminish progressively as she extends her conquests and power. The fatal influence which the gratuitous supplies from the provinces would exercise upon the native agriculture, was perceived by Augustus; who intended to abolish them completely, because the reliance upon them discouraged agriculture: but he abandoned his intention from a conviction, that they would be restored by his successors for the purpose of gaining popularity.† Moreover,

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* Tom. ii. p. 218.

† Suet. *Oct.*, c. 42, who gives this account in the very words of Augustus himself.

the storms of the civil wars had driven great numbers of the small free proprietors, who cultivated the soil by their own labour, from their lands; and large tracts of country had fallen into the possession of enormously wealthy owners. Upon these estates all the labour was performed by slaves, working by day in chains, and at night shut up in prisons named *ergastula*. The result of this change was, that southern and central Italy, instead of being tilled by a race of hardy active farmers, themselves freemen, and working on their own land, was divided into plantations cultivated by slave labour. This was the true nature of the change which Pliny considered the ruin of Italy.* It was the diminution of the free class in the country, and the substitution of the comparatively wasteful and unprofitable labour of slaves, which he justly thought to be so disastrous. The depopulation of the country, and the junction of the small holdings into large estates, are described in Lucan's sketch of the consequences of the civil wars.

'——Fœcunda virorum
Paupertas fugitur . . . Tunc longos jungere fines
Agrorum, et quondam duro sulcata Camilli
Vomere, et antiquos Curiorum passa ligones,
Longa sub ignotis extendere rura colonis.' †

Where the increase of wealth leads to the consolidation of landed property, to the extinction of small proprietors, and the substitution of slave for free labour, it may cause depopulation, or, what the ancients considered as the same thing, a diminution in the number of the citizens. In this sense, poverty (as Lucan says) may be favourable to population; wealth may diminish the numbers of the people, where prosperity implies the increase of the slave as compared with the free class. The encouragements to marriage, which were accumulated by the policy of Augustus and his successors, were intended to counteract the temptations to celibacy which the existence of slavery afforded, and to increase the proportion of the free to the slave population. The phantom which the imagination of Goldsmith conjured up, was a reality in ancient Italy:

'Ill fares the land, to hastening ills a prey,
Where wealth accumulates, and men decay.'

In England, or any country where the working-classes are free,

* 'Verumque confitentibus latifundia perdidere Italiam.'—H. N. xviii. 7, § 3.

† I. 165-70.

increase of wealth can scarcely fail to be attended with increase of numbers. It is only in countries where the working-classes are slaves, that wealth can tend to depopulation, by discouraging the multiplication of that class in which alone a healthy principle of life exists.

The cultivation of corn in Italy having been thus discouraged by the competition of gratuitous supplies from the subject parts of the Empire, and the ancient free peasantry having been replaced by a scanty population of slaves, Rome became necessarily dependent on the Provinces for its food. It was dependent, not as one country is dependent on another, for articles obtained by a voluntary trade profitable to both parties; but as an army is dependent upon a distant Commissariat for its supplies. It was dependent, not as England was dependent on France for its importations of wine during the war with Napoleon, but as the French army in Russia was dependent for its food on the Commissariat arrangements made at the distance of a thousand miles. Experience has taught us, that the common interest of two nations engaged in mutual trade, affords the strongest security for the constant supply of the articles in demand. It is an old saying, that gold can penetrate where steel cannot cut a way. However intricate the machinery of commerce, individual interest almost always keeps it in good working order. But when the population of a great city is fed by a Commissariat system, the negligence or miscalculation of a single public officer, the derangement of a single wheel in the administrative machine, may produce scarcity or famine. Accordingly, notwithstanding all the vigilance of the Imperial government, there were famines at Rome under Augustus, Tiberius, Claudius, and Nero. Tacitus states, that in the scarcity under Claudius there only remained a supply of fifteen days for the city. 'Formerly,' he adds, 'corn used to be sent from Italy for 'the legions into distant provinces; nor is the land now deficient 'in fertility; but we prefer to obtain our supplies from Africa 'and Egypt, and the subsistence of the Roman people is en- 'trusted to the casualties of the sea.'* If, however, a sound and natural commerce in grain had existed between Rome and Africa,

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* Ann. xii. 43. Claudian says, that after Egypt had been given to Constantinople, Rome depended only upon Africa, which subjected her to a double uncertainty, viz. of the *season* and the *winds*.

'Nunquam secura futuri,
Semper inops, ventique fidem poscebat et anni.'
De Bell. Gild. v. 24-5.

the Roman citizens need not have feared the accidents of navigation, rude as that art was in antiquity. Nor would the fertile fields of Italy have gone out of cultivation, if their occupiers had contended merely against the fair competition of foreign trade, and they had not been supplanted by large supplies of corn, exacted from tributary subjects, and distributed gratuitously, or sold at nearly nominal prices.

So long as Rome retained her power, she could at least secure the regular remittance of the corn tributes from the Provinces. But when her ascendency had declined, the dangers of dependence for food upon tributary supplies began to show themselves. In the reign of Honorius, the province of Africa revolted under a rebellious governor, named Gildo, and withheld its customary subsidy of corn: Rome was on the brink of starvation, from which it was only relieved by timely importations from Gaul.* Claudian, in his poem on the Gildonic war, supposes Rome—no longer with a proud and warlike mien, but with feeble gait and emaciated cheeks, her shoulders scarcely able to support her shield, and her spear consumed with rust—to approach Jupiter as a suppliant, and, in lowly phrase, thus to entreat him that her inhabitants may not perish from famine. 'Formerly my prayers used to be, that my 'legions might triumph on the banks of the Araxes, or that the 'Consul might display his forces at Susa: now all I ask is, a 'supply of food to avert the extremities of hunger. The pro-'vince of Africa, which furnishes corn to my people, is under the 'power of Gildo. He intercepts our supplies, and our food 'is at his mercy. He sells the harvests which belong to the 'sons of Romulus, and he possesses the fields purchased by my 'blood. The soldier-people, which mastered the world, now 'unhonoured and in want, endures the miserable punishment of 'peace; though blockaded by no enemy, they are like the in-'habitants of a besieged town. Death impends at every moment; 'there remain only doubtful supplies of food for a few days. My 'very greatness has been my ruin; I was safer when my territory 'was more confined: would that its boundaries were once more 'close to my gates! But if I am doomed to perish, at least let 'me have a different fate; let me be conquered by another Por-'senna, let my city be burnt by a second Brennus. All things 'are more tolerable to me than hunger!' Such were the dangers to which the oppressive, improvident, and unnatural system for the supply of Rome with corn, reduced the population of that city at a time when its numbers were still immense.

* Gibbon, c. 29.

The preceding explanation shows, that if Rome was irregularly supplied with corn; if she was sometimes in danger of starvation; and if Italian agriculture was destroyed, these evils did not result from *freedom of commerce.** The mode by which the populace of Rome obtained their corn, had none of the characteristics of *Trade.* In trade, the article is sold voluntarily by the producer, and paid for at the natural price by the consumer. The Roman corn was wrung as a tribute from reluctant Provinces, and was distributed as a gift among the pauper multitude of the dominant capital. The more sagacious among the Roman statesmen perceived the ruinous tendency of this system. Cicero condemned its policy; J. Cæsar and Augustus checked its increase; and the latter even meditated its extinction; while Pliny, in his *Panegyric of Trajan,* observes, that a plentiful supply of grain in the market is as good for the people as a continual succession of gratuitous distributions by the government.† It was a system doubly pernicious; it began with oppression of the Provinces, it ended with the corruption of the Capital; while, at the same time, it waged a war of extermination against the native agriculture of Italy. It was a bad poor-law, it was a bad corn-law. If the indigent freemen of Rome needed public relief, they ought to have received it from the taxation of the richer freemen of the capital. If Rome required supplies of foreign grain, they ought to have been obtained by voluntary commerce. If tributes were imposed upon the Provinces, they ought to have been expended in purposes tending to the general service and advantage of the Empire.

The political and economical state of the Roman Empire was, happily, so different from that of England and other modern nations, that no inferences can be safely drawn from the Corn-Laws of Rome to those of our own time; without making the corrections and exclusions which these differences indicate. But when the points of difference are well understood, the points of resemblance are sufficiently numerous to render the comparison both instructive and interesting.

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* 'By the extension of their power over all the nations adjoining the Mediterranean, as well as by the incessant clamours of the Roman populace for *cheap bread,* the Roman government was early obliged to admit *a free importation of grain* from Sicily, Libya, and Egypt, the great granaries of mankind in ancient times.'—Alison *on Population,* vol. ii. p. 417. The cry of the Roman populace was not for *cheap bread,* in the modern sense, but for *gratuitous bread—Panem et Circenses.*

† 'Instar ego perpetui congiarii reor affluentiam annonæ,' c. 29.

ART. IV.—*Poems*. By THOMAS HOOD. 2 vols. 12mo. London: 1846.

IF our estimate of the merits of these compositions be more balancing and doubtful than that of some of our contemporaries—if we hesitate as to the precise rank which they are likely to occupy as contributions to English Poetry—our hesitation assuredly does not proceed from any doubt as to the high claims of the variously gifted author; or want of sympathy with the generous, manly, and benevolent spirit which guided his writings, and actuated his life. But while we feel that these volumes possess many of the finest elements of poetry; that they abound with thought; are prodigal of imagery; sparkle with wit and fancy; and are throughout inspired by a genial principle of kindness and philanthropy—we yet cannot be insensible to certain cardinal defects by which their good qualities are alloyed; and by which, we fear, the permanent popularity of Mr Hood as an English poet may be impeded, if not endangered. These defects have grown out of that very affluence of mind which constitutes his strength;—they have sprung not from penury but luxuriance of thought; and have become interwoven with the character of his genius and writings, through the force of circumstances which rendered the union almost inevitable and inseparable. Take him for all and all, however, it is impossible to confound him with the versifiers of the day: in his errors and his excellencies he stands out from the common rank; he pursues a path of his own—sometimes a little entangled and devious, it must be confessed—but which he has at least hewn out for himself, and which leads to a distinct and intelligible goal.

In looking to the character of Mr Hood's mind, we are immediately struck with the variety which it displays. We do not at the present day require to be told that there is no incompatibility between wit and pathos, or that sensibility and humour may dwell together in the same heart; for we have been rendered familiar with such associations in the character of our greatest writers. But in Hood this alliance is more than usually conspicuous. He is open to all influences, and yields himself with equal pliancy to all. He can call up the most grotesque conceptions,—the most incongruous and ludicrous imagery; whole trains of comic and mirth-inspiring fancies wait upon his will without an effort: but he seems to find himself as much at home in the contemplation of serious human emotion—in listening to, or echoing back, some old and moving story of love and pity—or letting his thoughts

wander with devout gratitude over the beauties of creation, or in sympathy with the fading glories of old traditions. In not a few of his poems he has even ventured to commingle these discordant elements; and the quaintest allusions, quips and cranks of all kinds, stand side by side with thoughts of earnest interest, and happy homely touches of feeling, which sink quietly but surely into the heart. He has not only paid his court alternately to Comedy and Tragedy, and with success; but he may be said to have introduced these ancient rivals to each other, and taught them by an interchange of good offices to live together in cordial union.

It is a consequence of this enlarged and liberal view of human nature, and this happy accommodation of the spirit of humour with feeling, that while Hood indulges in a constant under current of satire in his comic poems, that satire has nothing in it one-sided or malignant. He cannot shut his eyes either to the vices or the follies that are paraded before him; but he does not seek out by choice the sores and diseases of society. Indignant and energetic against that heartlessness and apparent indifference to the evils of humanity which are the growth of great cities, and which, in the British metropolis, are unfortunately more apt to catch the eye than the many secret and silent currents through which benevolence and charity circulate their stores, he seeks not to inflame one class of society against the other by a gloomy poetical Chartism: his aim is only to point out existing evils; to appeal to the better feelings of men: for their removal or relief; and to unite society, not by the ties of fear or force, but by the bond of kindness on the part of the rich, repaid by gratitude on that of the poor. Thus his satire, even where it is most pungent, is not *personal*. He acts like a soldier in fair warfare, who levels his weapon against the hostile lines, but takes no aim, as he bears no enmity against any particular opponent.

Only in one instance, at least in these volumes, does Mr Hood deviate from this rule, but, as we gather from several passages in his writings, not without considerable provocation; for the pleasantry of his works, touching, as it sometimes did, in a light, though, as we think, not an irreverent spirit, upon topics of a serious nature, appears to have exposed him to a good deal of unfair remark from certain classes or societies, who, assuming to themselves a monopoly as it were of granting Degrees in Piety, attempt to put down, as irregular practitioners, all who have not taken out a license from their Sanctuary. From these acrid censors, Hood appears to have sustained considerable annoyance; and he has revenged himself in an Ode of consummate clever-

ness—addressed to a gentleman whom he treats as the Coryphæus of the class,—but with so much of tact, and good-humour, and genuine pleasantry, mixed with a spirit of true charity, that if the person thus addressed was able to peruse it without feeling the 'cordage of his countenance' relaxed, his inflexibility of muscle was little to be envied.

Another indespensable quality of a poet Hood possessed in a high degree,—that of clear vision. It pervaded his choice of themes, his imagery, the whole expression of his thoughts. For the mystical or the vaporous,—those reveries of airy republics and fantastic schemes of moral regeneration, on which the great genius of Shelley wasted so much of its powers, and from which in fact scarcely any thing he ever wrote is entirely free, (with the exception of the stern drama of the 'Cenci,')—and still more for those fierce and ghastly exaggerations—*ægri somnia*—with which our later poetical literature had teemed, he had no taste or sympathy whatever. Even where dealing with an airy and fanciful theme,—as in the 'Plea of the Midsummer Fairies,'—the Elfin pictures are as clear and distinct as if he had been painting a scene in the Strand or at Exeter Hall; the Tiny Elves flutter and gambol in their appropriate habit, and talk and plead their case before grim and unrelenting Time, with a wonderful air of business-like reality. He chose no theme, in short, till he saw his way clearly to some object; he attempted to paint nothing till he had realized it to his own mind. Generally speaking, therefore, he shunned the visionary and the abstract; he *could* throw himself back into the romance of the past, but his home was naturally among the realities of the present; and his aim was to soften its harsh and rugged features, and to brighten them, as far as they could be brightened, by the cheerful sunshine of poetry.

The general clearness of view and the decision of purpose which are observable in the treatment of his subjects, can of course only be appreciated by a perusal of them as a whole. But the lively and graphic way in which he presents an image to the mind, may be illustrated by one or two examples. And with regard to these it may be remarked, that they owe their effect, first, to this—that he never appears to draw his images from books,—presenting merely a reflection from a reflection, but from his own observation of nature; and next, to the great simplicity of expression in which the image is embodied. He knew well that plainness wins us more than eloquence;—therefore he never disdained a homely word if it was the fittest to convey his meaning; and hence an air of originality even in the expression of images which are in themselves of no remarkable novelty. It may be added, too, that the character of their expres-

sion changes, as it ought to do, with the nature of the subject; for while in themes like 'Eugene Aram's Dream,' or the 'Old Elm-Tree,' where the ballad measure is adopted, the diction is of a kindred simplicity; in others, such as the 'Plea of the Midsummer Fairies,' and 'The Two Swans,' it possesses a quaint and antique solemnity, admitting inversions, compound epithets, and new applications of old words—these last, however, being sparingly employed, though generally with much felicity.

Look at these images from the 'Haunted House'—one of the most remarkable poems in these volumes:—

'The wren had built within the porch—she found
Its quiet loneliness so sure and thorough;
And on the lawn, within its turfy mound,
The rabbit made his burrow.

'The rabbit wild and grey that flitted through
The shrubby clumps, and frisk'd, and sat, and vanish'd,
But leisurely and bold, as if he knew
His enemy was banish'd.'

* * *

'The coot was swimming in the reedy pond
Beside the water-hen, so soon affrighted;
And in the weedy moat the heron, fond
Of solitude, alighted.

'*The moping heron, motionless and stiff,*
That on a stone as silently and slily
Stood an apparent sentinel, as if
To guard the water-lily.'

How true, how distinct, this last picture of the moping heron at his watch, and with what simplicity of words is it presented!

Here, again, is an interior section of the same house of mystery:—

'Huge drops roll'd down the walls, as if they wept;
And where the cricket used to chirp so shrilly,
The toad was squatting, and the lizard crept
On that damp earth and chilly.

* * *

'The floor was redolent of mould and must;
The fungus in the rotten seams had quicken'd;
While on the oaken table coats of dust
Perennially had thicken'd.

* * *

'The air was thick, and in the upper gloom
The bat—*or something in its shape*—was winging;

And on the wall, as chilly as a tomb,
The death's-head moth was clinging.

* * * *

'The subtle spider that from overhead
Hung like a spy on human guilt and error,
Suddenly turn'd, and *up its slender thread*
Ran with a nimble terror.'

These stanzas remind us of some fine lines of Crabbe, in a picture of a similar deserted Manor; and it is interesting to observe how differently two minds dealing with nearly the same images, have treated them; and to contrast the brief vigour of Crabbe, with the anxious, oft-repeated, and Mieris-like touch with which Hood works up the outlines of his picture of desolation, till the very spirit of superstition and nameless fear is made to brood over the canvass!

'Forsaken stood the hall,
Worms ate the floor, the tap'stry fled the wall;
No fire the kitchen's cheerless grate display'd;
No cheerful light the long-closed sash convey'd!
The crawling worm, that turns a summer fly,
Here *spun his shroud, and laid him up* to die
The *winter death*—upon the bed of state.
The bat, *shrill shrieking*, woo'd his *flickering* mate!'

Here is a more cheerful picture of a sylvan landscape from 'The Elm-Tree,' enlivened by the movement of its timid inhabitants:—

'The deed is done; the tree is low
That stood so long and firm;
The woodman and his axe are gone,
His toil has found its term;
And where he wrought, the speckled thrush
Securely hunts the worm.

'The cony from the sandy bank
Has run a rapid race,
Through thistle, bent, and tangled fern,
To seek the open space,
And *on its haunches sits erect,*
To clean its furry face.

'The dappled fawn is close at hand;
The hind is browsing near;
And on the larch's lowest bough,
The ousel whistles clear;

But checks the note
Within his throat,
As choked with sudden fear!'

In a different style of diction, though possessing the same merits of picturesqueness and clear portraiture, compare these lines, from the 'Plea of the Midsummer Fairies:' the first, the opening stanzas of the poem, calling up the spirit of the hour, the season, and the spot, and attuning the mind to the moonlight pageant which is to follow; the other, a description of a wild and tangled wood, the scene of an intended suicide. The former recalls to us the touching twilight opening of the eighth canto of the *Purgatorio;** the latter forms no unworthy pendant to the 'Cave of Despayre,' in Spencer—

'Far underneath a craggy cliff ypight,
Dark, doleful, dreary, like a greedy grave.'

'Twas in that mellow season of the year,

When the hot sun singes the yellow leaves
Till they be gold, and with a broader sphere
The moon looks down on Ceres and her sheaves;
When more abundantly the spider weaves,
And the cold wind blows from a chillier clime;
That forth I paced on one of those still eves,
Touch'd with the dewy sadness of the time,
To think how the bright months had spent their prime.

* * *

'It was a wild and melancholy glen,
Made gloomy by tall firs and cypress dark,
Whose roots, like any bones of buried men,
Push'd through the rotten sod for fear's remark;
A hundred horrid stems, jagged and stark,
Wrestled with crooked arms in hideous fray.
Besides *sleek ashes* with their *dappled bark,*
Like crafty serpents climbing for a prey,
With many blasted oaks, moss-grown and grey.'

In both these extracts, but particularly the last, a power beyond that of *mere* truthful description is obvious. The picture is a magic glass that shows us many more;—it is suggestive of a crowd of analogies appropriate though not obvious. It is not literal portraiture in short, but portraiture elevated into poetry.

While we are thus dwelling on some of the details of these Poems, we may be allowed to put together, 'without note or

* *Era già l'ora che volge 'l desio*
A i naviganti, &c.

'comment,' one or two additional instances of this form of pregnant and significant expression.

A Reflection.

'I saw a tower builded on a lake,
Mock'd by its *inverse shadows* dark and deep;
That seem'd a still interiser night to make,
Wherein the quiet waters sunk to sleep.'

The Magnifying and Transforming Power of Love.

'Look how the golden ocean shines above
Its pebbly stones, and magnifies their girth;
So does the bright and blessed light of love
Its own things glorify, and raise their worth.'

A Fairy.

'Clad all in white like any chorister
Comes fluttering forth on his melodious wings,
That made soft music at each little stir,
But something louder *than a bee's demur*
Before he lights upon a bunch of broom.'

Melancholy.

'His face was ashy pale, and leaden care
Had sunk the level'd arches of his brow.'

We might multiply such passages almost to any extent; for there are few of these poems which do not contain some lines which only a poet—in the better sense of the word—could have written; but it is needless to accumulate evidence, when in all probability no doubt is felt as to the point to be proved; and we therefore turn to other matters on which a greater discordance of opinion may not unreasonably be anticipated.

We have said that the works of Mr Hood, taking them as a whole, exhibit a combination of genuine poetical excellencies, with not a few defects which enter deeply into their structure, and are likely to be injurious to their permanent popularity; and we have hinted that these defects, which seem inextricably interwoven with his comic poems, and to have coloured too deeply his more serious compositions, are traceable to causes over which he had but little control. We allude to the vein of exaggeration, endless digression, and forced conceit, which disfigure the one; and the long-winded accumulation of details, the indisposition, if not the inability, to retrench a single trait of description which in itself appeared susceptible of introduction, that overload and embarrass the other.

And here is precisely what induces us to pause, when attempting to assign the place which Mr Hood is likely, or entitled, to occupy as an English poet. Does any thoroughly great poet, we are constrained to ask ourselves, evince this incapacity to blot?—this tendency to hunt down both thought and description? Is not the effect of most of his efforts seriously injured by indefinite expansion of description, and over elaboration of the idea,—be it serious or comic,—with which for the time he is haunted? Are we not, particularly in his humorous compositions,—where the joke is absolutely worn threadbare by the wear and tear to which it is subjected,—made painfully sensible of the truth of the French apothegm, *Le secret d'ennuyer est celui de tout dire?*

To his comic poems this censure appears to be particularly applicable. His brain teems with humorous fancies, but he cannot afford to part with one. Every quip or crotchet which the train of associations suggests, he insists on imparting to the public; and, as might be expected from this indiscriminate effusion, for every stroke really successful we have ten which are forced or unnatural. An absolute Anthology of bad jokes and wretched plays on words, might be compiled from his writings, rich as we at the same time admit them to be in real wit and humour. 'A quibble is to Shakspeare,' says Johnson, 'what luminous vapours are to the traveller; he follows it at all 'adventures; it is sure to lead him out of his way, and sure to 'engulf him in the mire.' What is thus absurdly applied to Shakspeare is literally true of Mr Hood. Once caught by a play on words, his course defies calculation: one conceit brings on another, till we lose sight entirely of the point from which we started, and lose at the same time all anxiety to return to it. The same thing may be said of his quaint or double rhymes. In this department he certainly exhibits a singular mastery, though we incline to think he has even here been foiled at his own weapons by the author of the 'Ingoldsby Legends.' But we pay dearly for any pleasure afforded by these feats of poetical legerdemain, when we perceive that whole stanzas, having the feeblest possible connexion with the subject, have been constructed solely for the sake of the rhyme; and that, as in the story of 'Miss Kilmansegg,' the amusement, such as it is, is to be purchased at the price of digressions and circumvolutions, to which the course of Tristram Shandy appears direct, and that of Rabelais methodical.

But though it is in his humorous pieces that this tendency to extravagance appears most offensive, even his more serious compositions partake of the same tendency to overload the subject

with 'wasteful and ridiculous excess.' What, for instance, shall we say of the 'Haunted House?' We grant that each feature of the picture, taken by itself, is good; and that the whole has a sombre and sepulchral tone which produces a strong impression on the mind. Had the poem formed the porch to an edifice of like proportions,—had it formed the introduction to some tragic tale of blood,—this long note of preparation might not have been out of place; though even then we should have held that the effect would have been heightened if one-half the details had been retrenched. But, standing by itself, and leading to nothing, the long array of dreary imagery simply wearies and fatigues. In like manner, in the 'Midsummer Fairies,' there is too great an anxiety shown to exhaust all the views in which the subject can be placed; till, as we listen to the interminable rejoinders, we are tempted to imitate the example of the judge in the *Plaideurs*, and to request that every thing prior to the Deluge may be omitted.

We trace this tendency, which we regard as the chief drawback to the merits of these poems, and their chances of future popularity, in a great measure, to the unfortunate effects produced by a constant connexion with, and dependence on periodical literature. This connexion, early begun in Hood's case, continued through life, not as a matter of choice on his part, but of stern necessity. Now we know few things more adverse to the formation of a great poet, or to the production of works which are to be of an enduring character, than the education which is acquired in such a school. The constantly recurring demands of Periodical Literature are fatal to all deliberation of view,—to all care, or study, or selection of materials; in the case of those who engage in it as a Profession. The tale of bricks must be furnished by the appointed day, let the straw be found where it will. Equally adverse is its influence to calmness and repose of manner, and to that breadth and evenness of composition which are the distinguishing characteristics of those works which we regard as the classics of our language. Be wise, instructive, graceful,—natural if you will, is the lesson inculcated by the Genius of periodical literature—but, above all, be *pointed*, be *striking*. Those are the accessories—these last only are essential and indispensable. Hence the current of thought is rarely suffered to flow onward with its natural movement; it must be artificially fretted into foam,—thrown up in epigrammatic jets, or scattered about in sparkling showers of conceits and quibbles.

How can one educated under such influences be expected to deal with the compositions of the month as he would with works destined for eternity? A certain space must be filled in a given time; and if a fertile mind, prodigal of ideas and images, pours

them out before him in such profusion as to enable him to accomplish his task, and do his spiriting gently,—need we wonder that he transfers them to paper without being very solicitous as to their coherence or propriety, provided they present themselves in the garb of novelty, and dazzle the fancy with somewhat picturesque and unexpected? Rather, in the case of Hood, may we wonder that, circumstanced as he was, he has not yielded more frequently to the temptations which the exigencies of periodical literature present; and that, harassed by the daily claims of the present, he has written so much which posterity, after all, will be willing to remember.

'If there be a mental drudgery,' said one who, we fear, in his declining years, experienced not a little of the suffering which he so touchingly describes *,—'if there be a mental drudgery which 'lowers the spirits and lacerates the nerves like the toil of the 'slave, it is that which is exacted by literary composition, when 'the heart is not in unison with the work on which the head is 'employed. Add to the unhappy author's task, sickness, sorrow, 'or the pressure of unfavourable circumstances, and the labour 'of the bondsman becomes light in comparison.' This passage is but too applicable to the case of Hood. For we know that many of those gay and mirthful compositions which might force 'a smile even under the ribs of death,' and which appear to flow from a heart as light and joyous as the strain, were, in truth, written amidst sickness and suffering; and all of them under the pressure of narrow circumstances and domestic anxieties. Yet of these secret sources of annoyance, and these trials of health, which are so apt to wear down the spirit and to vent themselves in querulous despondency, who can perceive a trace in these healthful and manly volumes? Hood adopts and exemplifies, in his own practice, the sentiment of Campbell—'To bear is to 'conquer our fate.' Destiny had pointed out to him the field of Literature as the appointed sphere of his exertion; and it awakens at once our respect and pity to see how cheerfully he addressed himself to his task from first to last;—how gallantly he laboured at his post till the going down of the day; furnishing amusement to the public while Care sat by his own couch; and bringing smiles into the eyes of others, when we may well believe his own were sometimes clouded by a tear.

We have said that Hood's long and intimate connexion with periodical literature, *as a profession*, appears to us to lie at the bottom of many of the main defects of his composition. It certainly

* Sir W. Scott's *Biographies*, vol. ii. p. 68.—Notice of Charlotte Smith.

promoted not merely an extravagance of conception in some points, and needless expansion in others; but it led him occasionally to indulge in a certain vein of exaggeration, and of harsh portraiture, apparently very adverse to the calm tendencies of his native tastes; but which he found to be more acceptable to the public than many of those poems on which much thought, and labour, and refinement had been bestowed. The two compositions, for instance, which have attained the *noisiest* popularity, are among those which to us appear the least poetical in these volumes—we allude to the 'Song of the Shirt' and the 'Bridge of Sighs.' We respect the generous and humane feeling which dictated both; we grant that the former produces a heart-rending impression upon the feelings; that it paints with a stern and gloomy touch a scene of misery and suffering, too common, but alas! we fear, unavoidable and irremediable. All this we grant, but we cannot recognise—or at least in any high degree—its claims to poetry. To be the mouthpiece of such a wail of distress—to give words to a sentiment already felt generally, though inarticulately, and thus to strike home to the public sympathy, demands honesty and strength of language; but it requires but little aid from poetry, and we must add, in all candour, in this instance it has received but little.

Infinitely more attractive to our minds is another poem on the same theme, entitled the 'Lady's Dream;' in which the subject, we think, is treated far more poetically, and at least as usefully, so far as a moral is concerned. From the former, the conclusion that would naturally be drawn is, that all the world are utterly heartless, and that the sufferings of the poor arise entirely through the selfishness and cruelty of the rich: from the latter we derive the truer and more practical lesson,

> 'That evil is wrought by *want of thought*
> As well as *want of heart*.'

The other poem to which we alluded—The 'Bridge of Sighs,' a funeral chant over a drowned female raised from the Thames—is perhaps even less agreeable than the 'Song of the Shirt;' and yet we perceive it has been more liberally quoted than almost any of these poems. To us it has, in several passages, a *falsetto* tone, though some of its pictures are not unworthy of a poet.

> 'Where the lamps quiver,
> So far on the river,
> With many a light
> From window and casement,
> From garret to basement,
> She stood with amazement,
> Houseless by night.

'The bleak wind of March
Made her tremble and shiver,
But not the dark arch,
Or the black flowing river:
Mad from life's history,
Glad to Death's mystery,
Soon to be hurl'd—
Any where, any where,
Out of the world!'

This, though capable of improvement in expression, is striking enough; but what shall be said of the stanza that follows?—

'In she plunged boldly,
No matter how coldly
The rough river ran—
Over the brink of it—
Picture it—think of it,
Dissolute man!
Lave of it—drink of it
Then, if you can.'

This seems to us the very gallop of false verse, and as far removed from poetry as from common sense. No one probably drinks the river water under any circumstances, who can possibly avoid it; and those who must drink it, will continue to do so, notwithstanding all the suicides by which it may have been stained, and all the elegies on unfortunate females that ever were or will be written.

If the 'Dream of Eugene Aram' were not already familiar to the public, we should have referred to it as by far the most successful specimen of the combination of a vigorous and stirring theme with a poetical treatment, exalting the subject above the level of a mere reality, which these volumes contain. The quiet introduction, which breathes the serenity of evening—the picture of the guilty Usher sitting remote from the happy schoolboys, as, under the evening sunshine, they drive the wickets in—the spell which works upon him and forces him, like the 'Ancient Mariner,' to unbosom himself, under the guise of a dream, to the studious boy, who, like himself, had been poring over a book at a distance from his companions—the wild, broken, ghastly narrative of the murder, half real, half evoked by the sorcery of conscience—the deep feeling of a constant and gnawing torture of heart, which this ballad leaves behind, have been seldom equalled; and, except in the splendid creation of Coleridge,*

* *The Ancient Mariner.*

which seems to have furnished the key-note of the composition —never surpassed.

But this fine ballad is already too well known to require or justify any extracts. We prefer selecting one or two specimens less familiar to the public, and written in a manner to which we are less accustomed. Let us contrast, for instance, with the stern and rapid march of Aram's Dream, some beautiful stanzas from the 'Ode to Melancholy,' to which the imagery and turn of the thoughts, calm and softened, but not gloomy or austere, and the melody produced by the artful and long-continued recurrence of the rhymes—as in some of the passages in the 'Midsummer Night's Dream'—impart a soothing and delightful charm:—

'Come let us set our careful breasts,
Like Philomel, against the thorn,
To aggravate the inward grief,
That makes her accents so forlorn;
The world has many cruel points,
Whereby our bosoms have been torn,
And there are dainty themes of grief,
In sadness to outlast the morn,—
True honour's dearth, affection's death,
Neglectful pride, and cankering scorn,
With all the piteous tales that tears
Have water'd since the world was born.

'The world!—it is a wilderness,
Where tears are hung on every tree;
For thus my gloomy phantasy
Makes all things weep with me!
Come let us sit and watch the sky,
And fancy clouds where no clouds be;
Grief is enough to blot the eye,
And make heaven black with misery.
Why should birds sing such merry notes,
Unless they were more blest than we?
No sorrow ever chokes their throats,
Except sweet nightingale; for she
Was born to pain our hearts the more
With her sad melody.
Why shines the sun, except that he
Makes gloomy nooks for Grief to hide,
And pensive shades for Melancholy,
When all the earth is bright beside?
Let clay wear smiles, and green grass wave,
Mirth shall not win us back again,
Whilst man is made of his own grave,
And fairest clouds but gilded rain!

* * *

'Oh clasp me, sweet, whilst thou art mine,
And do not take my tears amiss;
For tears must flow to wash away
A thought that shows so stern as this:
Forgive, if somewhile I forget,
In woe to come, the present bliss.
As frighted Proserpine let fall
Her flowers at the sight of Dis,
Ev'n so the dark and bright will kiss.
The sunniest things throw sternest shade,
And there is ev'n a happiness
That makes the heart afraid!

'Now let us with a spell invoke
The full-orb'd moon to grieve our eyes;
Not bright, not bright, but, with a cloud
Lapp'd all about her, let her rise
All pale and dim, as if from rest
The ghost of the late buried sun
Had crept into the skies.
The Moon! she is the source of sighs,
The very face to make us sad;
If but to think in other times
The same calm quiet look she had,
As if the world held nothing base,
Of vile and mean, of fierce and bad;
The same fair light that shone in streams,
The fairy lamp that charm'd the lad;
For so it is, with spent delights
She taunts men's brains, and makes them mad.

'All things are touch'd with Melancholy,
Born of the secret soul's mistrust,
To feel her fair ethereal wings
Weigh'd down with vile degraded dust;
Even the bright extremes of joy
Bring on conclusions of disgust,
Like the sweet blossoms of the May,
Whose fragrance ends in must.
Oh give her, then, her tribute just,
Her sighs and tears, and musings holy!
There is no music in the life
That sounds with idiot laughter solely;
There's not a string attuned to mirth,
But has its chord in Melancholy.'

Among Mr Hood's Poems there are several Sonnets; but we can scarcely say that he has overcome the proverbial difficulty

which attaches to this species of composition. The thought is not, in general, wrought out with that clearness of expression, and simple development, which is essential to the full effect of the Sonnet—giving to the poem, even with all its elaborate construction, an appearance of natural growth. The following appears to us the most favourable specimen we can select:—

'FALSE POETS AND TRUE.

'Look how the lark soars upward and is gone,
Turning a spirit as he nears the sky!
His voice is heard, but body there is none
To fix the vague excursions of the eye.
So, poets' songs are with us, though they die
Obscured, and hid by death's oblivious shroud,
And Earth inherits the rich melody,
Like raining music from the morning cloud.
Yet, few there be who pipe so sweet and loud
Their voices reach us through the lapse of space:
The noisy day is deafen'd by a crowd
Of undistinguish'd birds, a twittering race;
But only lark and nightingale forlorn
Fill up the silences of night and morn.'

We will conclude our brief survey of the contents of these volumes—of which we have said enough to show our sincere respect for the genius, and the liberal and generous spirit and character of the author's mind—with the following specimen of his gayer manner. It is not penned in that style of riotous mirth in which he sometimes indulges: it is a playful trifle,—written with his usual grace, good-humour, and kindliness of feeling.

'ROTTERDAM.

'I gaze upon a city—
A city new and strange,—
Down many a watery vista
My fancy takes a range;
From side to side I saunter,
And wonder where I am;
And can *you* be in England,
And *I* at Rotterdam!

'Before me lie dark waters
In broad canals and deep,
Whereon the silver moonbeams
Sleep, restless in their sleep;
A sort of vulgar Venice
Reminds me where I am;
Yes, yes, you are in England,
And I'm at Rotterdam.

'Tall houses with quaint gables,
Where frequent windows shine,
And quays that lead to bridges,
And trees in formal line,
And masts of spicy vessels
From western Surinam,
All tell me you're in England,
But I'm in Rotterdam.

'Those sailors, how outlandish
The face and form of each!
They deal in foreign gestures,
And use a foreign speech;
A tongue not learn'd near Isis,
Or studied by the Cam,
Declares that you're in England,
And I'm at Rotterdam.

'And now across a market
My doubtful way I trace,
Where stands a solemn statue,
The Genius of the place;
And to the great Erasmus
I offer my salaam;
Who tells me you're in England,
But I'm at Rotterdam.

'The coffee-room is open—
I mingle in its crowd,—
The dominos are noisy—
The hookahs raise a cloud;
The flavour now of Fearon's
That mingles with my dram,
Reminds me you're in England,
And I'm at Rotterdam.

'Then here it goes, a bumper—
The toast it shall be mine,
In schiedam, or in sherry,
Tokay, or hock of Rhine;
It well deserves the brightest,
Where sunbeam ever swam—
"The Girl I love in England"
I drink at Rotterdam!'

ART. V.—*Ægyptens Stelle in der Weltgeschichte. (Egypt restored to her Place in Universal History.)* By C. C. J. BUNSEN. Three volumes. 8vo. Hamburg: 1845.*

HERODOTUS, the earliest and most competent of our classical authorities upon Egypt, describes that country and its inhabitants as differing in the most striking manner—in climate, soil, character, customs, and institutions—from all other regions or races of men of whom he possessed any knowledge. Every subsequent enquiry has tended to bear out the substantial truth of this statement,—in as far at least as regards the world for which Herodotus wrote; for the advance of geographical research has shown certain of the peculiarities on which he dwells to be more or less common to various other nations.

The broadest general feature of this singularity was their stern exclusive jealousy of national feeling—their boundless veneration for every thing Egyptian, their hatred and contempt for every thing foreign. While there are, probably, few countries of the ancient world but have borrowed largely in the progress of their own culture from Egypt, we find no trace of the Egyptians having been indebted for a single custom or branch of knowledge to any of their neighbours. The persons and habits of strangers were to them an abomination; their visits, probably, as a general rule, prohibited. Foreign travel, on their own part, seems to have been still more severely discountenanced. The legends of Egyptian maritime colonies, if at all authentic, are to be understood of other than the indigenous race. With abundant evidence of the extent and success of their foreign expeditions, we hear of no Egyptian Province permanently established beyond their own immediate frontier. Even thirst of glory and martial enterprise, like every other taste or talent, became subservient to the one grand object of upholding the integrity of the state; by weakening its rivals, or augmenting at their expense, by exaction of tribute, its wealth and internal resources.

This principle of unblemished integrity imparts a certain grandeur to the national character of the Egyptians, superior to what any other state can boast in ancient, or even perhaps in modern times. We must here, however, guard against confound-

* Many of our readers will be glad to be informed that an English Translation of this work, incorporating some additional information, both historical and antiquarian, obtained since the publication of the original Edition, and executed under the superintendence of M. Bunsen himself, is soon to appear.

ing, as frequently happens, the terms Nation and Empire. The former denotes a distinct homogeneous race of men, united by the ties of common origin, language, and manners. The word Empire, on the other hand, applies to any large body of our species living under the same system, voluntary or compulsory, of law and government,—however radically distinct in blood or habit. By reference to this definition, Rome, the greatest of all Empires, scarcely ever possessed a palpable existence as a Nation: even her own early fables hardly claim for her a germ of pure national integrity. The same is more or less the case with all the great Empires of antiquity: the individuality of the dominant tribe was obliterated by the extension of its sway. The Egyptians, on the other hand, while advancing, in the above sense, but slender claim to imperial honours, present, as a nation, the greatest, perhaps the only, phenomenon of its class in universal history. We here see a single people of pure unmixed race, and limited both as to numbers and territory, preserving, during thousands of years, the most rigid unity of character, custom, and social polity. We see them maintaining, during that long period, an indomitable spirit of political independence, often in the midst of the severest disasters and discouragements. We see them consolidating a power, which, while in its very essence incompatible with such an extension of frontier as formed the boast of their rivals, rendered them more than a match for the mightiest among them. We see them, by the force of this principle, rearing with unexampled rapidity, from their own unaided resources, a fabric of civilization, complete in itself, and surpassing, in many essential points of excellence, what the united efforts of far more highly gifted races have since been able to accomplish.

Another remarkable characteristic, which, if not exclusively proper to the Egyptians, appears at least in them in the most organic and systematic form, is the disposition, after a certain advance in culture, to stop short and remain stationary. On the cause of this curious anomaly we have no room to speculate; of its existence there can be no doubt; and as little of its having formed, strange as it may appear, another element of their national greatness. It is a trite rule, largely confirmed by the experience of history, that nations, like individuals, have their stages of growth, maturity, and decay; and that the attainment of any high climax of excellence is but the forerunner of a retrograde course of decline. An extraordinary duration of national prosperity, it will follow, can only be secured through some exception to this rule, or rather suspension of its operation,—by fixing, or stereotyping, as it were, a certain point of advancement as a *ne plus ultra*. This point, it results from the prin-

ciple of the rule itself, would necessarily be something short of the highest degree of excellence, which, judging from their previous efforts, the people in question were capable of attaining. Of this phenomenon, the history of Egypt offers a striking example. We there see a zealous and rapid course of intellectual development, suddenly superseded by a determination to go no further,—by a bigoted adherence to an imperfect type of still higher excellence. The extant monuments evince, in support of ample tradition, sacred and profane, that the same civil institutions, the same learning, art, and politeness, with which Greek writers make us familiar in the days of Amasis and Cambyses, existed in their substantial integrity thousands of years before, in those of Menes and Abraham. But the race of artists, who so rapidly carried to perfection the mechanical element of design, never so much as aspired to the ease and elegance of the Greeks. With an equal fertility and precocity of inventive talent in the more intellectual art of letters, as evinced by the variety and subtlety of their modes of writing, they never ventured on the great step which alone can insure the higher advantages of literary culture—a practical Alphabet. Unsurpassed, in many respects unequalled, to this day, in the elementary branches of commerce and manufacture, foreign trade and navigation were comparatively unknown among them—the latter notoriously detested and prohibited.

These characteristics of Egyptian genius, its exclusive *nationality*, and its combined principle of energy and torpor—apparently so incompatible, but here so finely blended—are curiously reflected in the physical structure of the race. The Egyptian is admitted by Physiologists to be a variety of the animal Man, distinct in itself, and referable to no other subdivision of our species. This very individuality, however, has further been observed to consist in the union of certain more prominent features of the Caucasian and Negro races,—the two extremes, as it were, of humanity; and the former may be held as representing its progressive, the latter its stationary principle.

It is, however, in their system of literary polity, their art of writing, and, still more, their mode of applying it to the registration of events, that their varied but limited and eccentric intellect appears in the form most interesting to the student of their history. This system was, by its very copiousness and ingenuity, so constituted as to render it an enigma impenetrable, not only to foreigners, but to the great mass of the citizens. The Egyptians, or rather that portion of them to whom the privilege was confined, were doubtless the most zealous race of scribes that ever existed. Their temples, their houses, their tombs, their idols, their portraits, their domestic furniture,—almost every

tangible object they possessed, was covered with writing. But it was a writing destined for the use of the writer rather than the public—to conceal, as much as to preserve, the facts it embodied. While, therefore, there is probably no country of the ancient world where events were more extensively recorded, whether registered in the government Archives, or emblazoned on the public Monuments, there is none, perhaps, where they were so little read or understood. History, or even literature, in the familiar sense of the term, they had none. Their State Registers seem to have been little more than dry catalogues of Kings, or royal genealogies, forming appendages to their sacred volumes, and preserved with the same jealous care from eye or touch of the profane. There was, therefore, but slender chance of posterity ever obtaining any satisfactory light on Egyptian history through a purely Egyptian medium. In their early days of political degradation, when European men of letters flocked to contemplate the monuments of their ancient glory, national vanity, it might have been expected, would prompt them to embody in a connected and intelligible form, for the use of their visitors, the evidence of their boasted priority to all other nations, in power, civilization, and learning. This purpose, however, seemed to be better served by keeping the original matter in their own hands, and dealing it out in such portions, or under such a colouring, as the occasion might suggest. Their guests, as it happened, were equally pleased with this arrangement. The Greeks, distinguished as they were for thirst of knowledge and success in its pursuit, were at all times comparatively deficient in the science of Critical Philology, and their labours in this department were solely or chiefly confined to their own language. The study of foreign literature held out little temptation; and the investigation of foreign history from native sources, unless at second-hand, appears scarcely to have occurred to them. It seems doubtful, from any evidence transmitted by themselves, whether any Greek writer upon Egypt was master of the Egyptian tongue, still less of the art of reading Hieroglyphics. When we reflect on the active, penetrating genius of this people, and their extraordinary success in other still more dry and laborious branches of learning, this certainly appears a most singular phenomenon. It were foreign to our present object to enlarge on its explanation. The shortest and safest that here occurs to us is, that the brilliant genius of the Greeks had its anomalies, as well as the methodical intellect of the Egyptians, and that this was one of them.

In the days, indeed, when Herodotus, our most copious Pagan authority, visited Egypt, historical research among his own countrymen was, as it ever afterwards continued in regard to

remote ages, rather *poetical* than *practical.* With Homer and Hesiod for their native authorities, they were the less likely to be fastidious in receiving the traditions of a neighbour so greatly surpassing themselves in antiquity and splendour; delivered on authority for whose learning and veracity they entertained a profound veneration. That the Egyptian Priests, on their part, took ample advantage of these dispositions, in furtherance of their twofold object of mystifying and magnifying their national annals, the text of Herodotus supplies abundant proof. We there find a general outline of Pharaonic succession, comprising in the details much accurate and valuable matter, but, as a whole, confused, disjointed, and fabulous;—the events least creditable to the Egyptians, suppressed or glossed over; those which made to their honour, amplified and exaggerated. The most remarkable crisis in their whole history, the Shepherd conquest, is not so much as mentioned by this author, nor indeed by any other classical organ of their popular tradition. His Cicerone's sly—to him unintelligible—allusion to it, under the figure of a 'King Philitis (Philistine) who fed his 'flocks around the pyramids,' together with the strange blending of Greek and Egyptian fable in the legends of Paris and Helen, Menelaus and Proteus, Perseus, Danaë, Io, &c., abundantly evince how ready the native Pundits were to turn to burlesque account the credulity of their pupils.

Herodotus, however, sufficed for the wants of his public during its flourishing ages. The few supplementary notices prior to the Alexandrian period are vague and incidental. How little practical importance Plato, and by inference his age, attached to the realities of Egyptian history, appears from his fable of *Atlantis;* where this acknowledged fountain-head of human science and civilization becomes, in his hands, a mere piece of fabulous mechanism—like the lion or the fox in Æsop—to illustrate, by a series of elegant but extravagant fictions, his own no less elegant but no less visionary Physiological theories.

The decline of original genius in art or literature is attended, in the natural course of things, by an extension and improvement of the science of criticism. The epoch of this crisis among the Greeks was that of the Macedonian ascendancy. Under the mild sway of the Ptolemies, Egypt herself became the most flourishing seat of this new branch of pursuit. Among the objects zealously promoted by these munificent Princes, perhaps the most important was the elucidation, from original sources, of the early history of nations more ancient than their own; and Egypt, as was to be expected, was not overlooked. The interposition of royal authority, with perhaps a certain yielding of the narrow bigotry of the native Priesthood to the more genial spirit of

their new masters, combined to secure to that country as much benefit from this useful enterprise, as the character of its records qualified it to derive. In the reign of Ptolemy Philadelphus, nearly simultaneous with the Septuagint version of the Scriptures, Manetho, a learned priest of Sebennytus, prepared from the Temple archives a connected series of Egyptian annals, comprising, beside a preamble of gods, heroes, &c., thirty dynasties of mortal Kings, with names, dates of accession, and remarkable events of each epoch. The work was composed in good Greek style. The native men of letters in the Greek provinces were, from necessity, better versed in the language of their masters than those in the vernacular dialect; and Manetho was a competent Hellenist. We shall reserve our further remarks on this compilation for a future page. By order of the succeeding Ptolemy, a catalogue or table of the earlier Pharaohs, from Menes downwards, was drawn up by Eratosthenes, a distinguished master of the Alexandrian school. It comprised but thirty-eight Kings; but was followed up by his disciple Apollodorus, surnamed 'the Chronographer,' in a further succession of fifty-three reigns. The importance of these documents, the former of which alone has been preserved, will appear in the sequel.

After this epoch, little progress was made by the Greek, and still less by the Roman men of letters, in the field of Egyptian research. Diodorus, with improved resources, and while still more elaborate, is less authentic than Herodotus. Not can we have better evidence of the prevailing deficiency of critical spirit than the fact, that neither in his commentaries nor in those of other classical authorities of the period, are either Manetho or Eratosthenes so much as mentioned in reference to any question of Egyptian history. The current of research had fallen, in fact, below the old level of Herodotus; and was the more turbid, in the ratio of the increased ignorance and quackery of the local tidemasters by whom it was regulated. The earliest recorded author who mentions Manetho is Apion, himself a born Egyptian, who, in a tract composed against the Jews, quotes to their discredit, from his history, a popular Egyptian version of the Exodus. This led to a retort from Josephus, which is chiefly valuable as preserving an important extract from the same work.

It is, however, to the genius of early Christian literature, next to the Alexandrian compilers, that the history of Egypt is under the greatest obligations; chiefly as having been the means of preserving the substance of these latter more indispensable authorities. Scientific chronology, from its connexion with religious dogma, now began to attract greater attention than in Pagan times; and Manetho came in for an especial share; owing to the equally close connexion between the Jewish and Egyptian

annals. His work, with other parallel authorities on Oriental history, was epitomised and commented by Julius Africanus, Bishop of Emmaus-Nicopolis, about the year 200. The original work of this learned Prelate has not reached us; but extracts from it, comprising the Thirty dynasties more or less entire, together with the Table of Eratosthenes, and some other more apocryphal documents of a similar character, are embodied in the Chronography of Georgius Syncellus,—a Byzantine monk of the ninth century. The dynasties have also been preserved in the Chronology of Eusebius, which has reached us nearly entire, in an Armenian version, while the Egyptian portion of it also forms part of the compilation of Syncellus. Manetho's numbers, as they stood, being widely inconsistent with the received chronology of the Old Testament, recourse was had to various expedients in order to bring the two into harmony. Such were the assumption of contemporaneous dynasties, and of years of four, three, or even one month, in the primitive Egyptian calendar.

During several centuries of modern research, the talents of various distinguished scholars were exercised in similar speculations. Among these, Marsham is distinguished for the boldness and ingenuity, if not the success, of his attempts to clear up difficulties. He has the merit, at least, of first rightly appreciating the superior value of Eratosthenes, as a guide to other less critical authorities. He assumes, like Eusebius, the existence of contemporary independent kingdoms in different parts of Egypt; adopting the Theban line of Eratosthenes as the elder branch, and the numbers in his Table as the true chronological key to the period over which they extend. All such theories, however, were but groping in the dark, in the absence of light from the single quarter whence it could be hoped—the original native monuments. The solution of the grand enigma, which alone could lead to their right understanding, the art of deciphering their language, was reserved for our own generation.

The first who successfully applied this important discovery to the elucidation of Egyptian history, was the celebrated J. F. Champollion. His restoration of Manetho's XVIIIth and XIXth dynasties—of the line of Princes who re-established their country's independence, after centuries of foreign usurpation, under whom Moses flourished, the Exodus took place, the armies of Egypt penetrated victorious into distant foreign lands, and her noblest monuments of art were erected—is a masterpiece of ingenuity; and, although liable in many of its details to correction, still remains the basis of all subsequent researches. Equal success attended his efforts in regard to the ensuing dynasties; as was to

be expected from the superior light reflected upon them by collateral history. That he was not so fortunate in dealing with remoter epochs, may be attributed partly to the less tractable nature of the subject, chiefly to the premature death, which, in 1832, brought his distinguished career to a close.

In the interval between this event and the appearance of the Chevalier Bunsen's publication, the names most distinguished in the same field of pursuit are those of Champollion's friend and pupil, Ippolito Rossellini of Pisa, Sir Gardiner Wilkinson, and Dr Lepsius of Berlin. To the strictly philological branch of the subject, the studies of the latter were chiefly devoted, and with signal success. He has the merit of purging the system of Champollion of various defects, which must otherwise have proved fertile sources of error; and of both simplifying the method and extending the limits of his grammar and vocabulary. In the illustration of the habits and institutions of the Egyptian people, the labours of the other two writers above named have been equally productive. Wilkinson's admirable series of volumes here leave, indeed, little to supply or desire. Less progress was made in the historical department, the ultimate scope of all the others. By the joint industry and ingenuity of Rossellini, Wilkinson, and various enterprising English travellers, additions were, it is true, made from time to time to our knowledge of the period already investigated by Champollion. The names and genealogical connexion of various Kings prior to the XVIIIth dynasty, were also elicited from the Monuments. Beyond that dynasty, however, all attempts to frame an admissible system of chronology proved as abortive as those of the French antiquary. The obstacles seemed rather increased than diminished by previous success. To discard the authority of the native annalist, from the point where we first find difficulty in understanding him, after so clear a vindication of his credit up to that point, seemed unreasonable. To account for seventeen dynasties, on the other hand, comprising some hundred Kings, and extending a thousand years or two beyond the received Scriptural epoch of the Deluge, appeared hopeless upon any, even the most liberal theory of connexion between sacred and profane history. Enquiry, therefore, was brought very much to a stand-still, with the exception perhaps, now and then, of an attempt on the part of some determined Procrustes of our native school of Chronology, to squeeze at all hazards, by a merciless process of amputation, the more obstinate extremities of the Mummy of Manetho, within the limits of his own prescribed bed of orthodoxy.

M. Bunsen is the first who has ventured boldly to grapple

with the whole thirty dynasties; and with a success which, if not complete, surpasses probably the anticipations of the warmest well-wishers to his undertaking. If he has not been able to scotch every head of the formidable Hydra, he has at least gone far to disable her carcass, and paralyse her future efforts to obstruct the better cultivation of the wilderness she haunted. He has brought to the struggle all the resources of extensive learning and unwearied industry; together with that spirit of intuitive combination in which the German school of historical criticism stands pre-eminent,—sharpened and matured by early and sedulous training under its greatest master, his distinguished friend and patron, Niebuhr. When we say, that on some prominent points of his system we shall be under the necessity of opposing him, we shall the more readily obtain credit for impartiality, in expressing our opinion, that, as a system, it is substantially correct; that he has, first and alone, proved the existence of a solid kernel of authentic history, in the entire series of the Manethonian dynasties,—extending from the infancy of human society, through several thousand years prior to the origin of our existing fabric of civilization.

M. Bunsen's work, however, is not confined merely to a disquisition upon the darker periods of Egyptian history. It contains a complete and valuable digest of the whole science of *Egyptology*, as reconstituted during the present century. The first of his now published volumes offers a general view of the previous Sages of research, from Herodotus down to the present day; with a critical estimate of the principal authorities, ancient and modern. Then follows a compendious summary of the hieroglyphical system, as improved by Lepsius; of the grammar and vocabulary; and, finally, of the Mythology of the Egyptians. The second and third volumes comprise the properly historical portion of his labours. A fourth is promised, connecting the Egyptian annals with those of contemporary nations. To the historical branch of the subject, our own attention will be chiefly confined. It were impossible, indeed, within the limits of a single Article, to do full justice to this extensive and profound series of researches. With its mythological department we shall willingly dispense. It is the one which possesses the least charm, either of novelty or interest; and where, we doubt if the utmost extent of discovery could add much of any real value to the existing stock of human knowledge. Suffice it to say, that M. Bunsen's is perhaps the most plausible exposition we have yet met with, of this extravagant and enigmatical system. On the philological element we shall touch, merely in as far as may be necessary to establish, at the outset, a right understanding as to the author's method of

Hieroglyphical interpretation; on the validity of which all his facts or arguments must so greatly depend.

Lepsius, and after him Bunsen, (vol. i. p. 403, *seq.*) class the whole Hieroglyphical *supellex* under two heads—Ideographic and Phonetic—signs of objects, and signs of sounds. They discard Champollion's more subtle distribution of the former class into *direct, figurative, symbolic*, &c.; and rightly, we think,—considering the minute, often indistinguishable nicety of the shades of difference in these varieties, and that all perform substantially the same functions in the written texts. The three scholars, however, agree in investing certain of the Ideographic elements with the more enlarged power of generic, or common sign of objects, in their collective or abstract capacity; with which power they are appended to other characters or groups. For example: the Hieroglyphic of god, man, city, following a Phonetic proper name, indicates, not a particular individual of one or other class, but merely that such proper name is to be interpreted in the one rather than the other sense. These, accordingly, are ranged under a separate head of Determinative signs, (*Deutbilder*,) to the number of 120. Inclusive of these, the whole Ideographic department comprises 580 characters.

It is, however, in the Phonetic class that the improvements of Lepsius upon Champollion are chiefly observable. The French critic ranked the whole number of characters endued with Phonetic power, amounting to upwards of 200, under one general head of alphabetic; each letter being thus allotted a large number of representatives, capable of the usual combination with its neighbours into words and syllables. This unwieldy mass Lepsius, followed by Bunsen, distributes into—I. Purely Alphabetic; II. Syllabic; and III. Mixed Hieroglyphics.

The former head comprises in all, upwards of 100 signs. But of these, Lepsius ascertained that about 30 alone were used Phonetically in the flourishing ages of Egyptian art; and Bunsen restricts this number to 25, for the remoter epochs to which his own researches extend; thus establishing the important fact, that the Egyptian alphabet proper, in its origin, was little more bulky than the Greco-Phœnicean. The additions chiefly took place during the Greek and Roman periods.

The two other classes of Phonetic character combine the alphabetic with the ideographic power; and both consequently admit the same definition of Mixed, which M. Bunsen restricts to the latter. In the former, a monosyllabic sound may be represented, either by a figure of the object it denotes, or by that figure armed with the phonetic power of initial letter of the word, combined with another purely alphabetic character, to complete it. Thus

Ab, *altar*, may be syllabically expressed, either by the figure of an Altar, or by that figure endued with the Phonetic power of A, combined with a purely alphabetic sign, b. This monosyllabic group, however, may also be used to denote other objects bearing the same name, or may even enter into the composition of longer words. For example: the same figure of an Altar, single or compounded as above, may also stand for ab, *to dance*; or as first part of the word ab-t, *the east*. These different meanings of the same term are distinguished, when necessary, by subjoining a Determinative Sign. About 70 characters are ranged by M. Bunsen under this head. The remaining class of mixed hieroglyphics is but an application of the same process to polysyllabic words. Thus the adjective Nofre, *good*, may be expressed, either simply by its symbolic representative, a lute, or by the figure of a lute, with the phonetic power of N, and the other purely alphabetic signs, f, r, &c., to complete the word. M. Bunsen gives about fifty characters of this kind. The difference, therefore, between the Phonetic value of these syllabic or mixed characters, and of the purely alphabetic class, is, that the former can only be used as initial letters; and only in combination with the single consonant, or group of consonants, necessary to complete the word which they figuratively represent.

The characters interpreted in M. Bunsen's tables thus amount in all to upwards of seven hundred, about eight-ninths of the entire number observable on the monuments. The question here arises, What guarantee have we for the validity of this interpretation? Considering the strangely complicated nature of the whole system, and the number, variety, and subtilty of its component elements; considering that they represent, not, as at first supposed, the comparatively living Coptic tongue, but a primitive sacred Egyptian dialect, (another result of the German school of research,) our knowledge of which is derived, and which therefore has itself to be reconstructed, from the Hieroglyphic texts; considering, further, that the wrong interpretation of a single character of this copious phonetico-figurative mass may vitiate the reading of a whole inscription;—ought it not, upon every principle of sound criticism, to be held indispensable to the application of any given sign to the historical texts, that its value should be established, not merely to the satisfaction of the individual interpreter, but of the scientific public? This condition, however, has not yet been fulfilled, unless in respect of a comparatively limited portion, of M. Bunsen's catalogue. Our confidence, indeed, in his own critical judgment and probity, would induce us, as a general rule, to be satisfied with his personal guarantee, wherever it has been afforded. But the greater

part of his interpretations are presented to us on the authority of others, on whose literary discretion we do not place a similar reliance—for example, the Grammar and Dictionary of Champollion. The changes effected by Lepsius in the system of that author, with the fact that his interpretations were founded on the modern Coptic dialect, would, in themselves, imply the inaccuracy of numerous articles in his lists. What, therefore, is now required, to give consistency and authority to the speculations of *Egyptologers*, is a complete catalogue of the interpreted elements, each accompanied, where not already upon record, with the chain of evidence on which it rests. M. Bunsen is himself aware of this deficiency; and regrets that the purely philological department of his subject should have been neglected in favour of its miscellaneous branches. So long, however, as the defect remains unsupplied, few Hieroglyphical texts can pretend to more than a hypothetical or apocryphal value; nor can professional interpreters have any right to complain, as M. Bunsen himself appears to do, of the scepticism that still lingers in many respectable, perhaps over-scrupulous quarters, concerning all historical speculations based on their art.*

Lest these remarks should appear inconsistent with the faith we have professed in the general results of M. Bunsen's own investigations, it may be proper to add, that they rest chiefly on that limited portion of the hieroglyphic vocabulary, of which we possess the most accurate knowledge—the proper names and titles of kings and royal personages, with the terms significant of their genealogical connexion, or of the dates and duration of their

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* The subjoined examples of lubricity or inaccuracy, even in M. Bunsen's Tables, will justify the above remarks.

No. 19 of the Table of mixed Hieroglyphics, is a Scarabee, rendered *cheper*,—alone, or with the usual alphabetic supplement. In the Ideographic Table (*Dingbilder*, No. 227,) the same sign appears, similarly rendered, but with the note appended, that 'Champollion and others read it *ter*.' In the numerous royal titles, in M. Bunsen's plates, where it occurs, it is read, after Champollion, '*ter*.' If '*ter*' be right, the mixed Hieroglyphic, '*cheper*,' must be ejected. If the latter be retained, the reading of a large number of M. Bunsen's royal rings must be wrong. In Champollion's *Lexicon* we find the sign interpreted '*tho*.'

Among the ideographic signs, (No. 392,) is one resembling a paddle or shovel, and interpreted '*user*.' It appears again among the mixed Hieroglyphics, (35,) where it is rendered '*tet*,' while, in the royal names, (Plate II. 4. d. III. 3. c. &c.,) and numerous other inscriptions, it is read '*tu*.'

reigns. These are in fact the same class of materials which enabled Champollion to elucidate the dynasties from the XVIIIth downwards, and which, with our present improved knowledge and better stock of materials, afford an equally solid groundwork for ulterior researches. Much beyond this, M. Bunsen admits his incompetency to proceed. 'There is,' says he, 'no scholar 'at this moment qualified to read off a single entire section of 'one of the hieroglyphical papyri,'—(vol. i. p. 320;) and it must be allowed that he has, upon the whole, acted in the spirit of this candid declaration.

In passing on to the historical part of his work, it will be proper to offer a concise view of the authorities to which he chiefly defers. These are of two classes—Literary Documents, and Figured Monuments. To the former class belong, 1. The Dynasties of Manetho, (vol. i. p. 99, *seq.*)—2. The Catalogues of Eratosthenes and Apollodorus, (p. 155, *seq.*)—and, 3. The Preserved Papyri, especially a most important one in the Turin Collection, (p. 82.) Of the second class, the most remarkable are the two great Genealogical Tables of Karnak and Abydos, (p. 62, *seq.*,) with several other similar, but less numerous, lists of royal names; besides many scattered singly, or in lesser groups, over the face of the miscellaneous monuments.

Manetho's History was divided into three books. The first terminated with the XIth dynasty; the second with the XIXth; the third with the final extinction of the native monarchy, under Nectanebo, last King of the XXXth, deposed by Darius Ochus. The second book thus comprehended the most flourishing, and the most disastrous period, of the Empire of the Pharaohs: on the one hand the brilliant eras of the XIIth, XVIIIth, and XIXth dynasties; on the other, the conquest and subjuga-

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No. p. c. of the Syllabic Table is an element described by M. Bunsen as a sceptre, '*pet*,' but read (contrary, we apprehend, to the first principles of the system) '*pech*.' This same sign, in the numerous royal names where it occurs, is rendered '*hem*.'

In the same Table, (k. b.,) we find the figure of a doubtful object interpreted '*ka*.' Among the mixed Hieroglyphics the same figure occurs, (No. 11,) where it is rendered '*chem*.'

We could augment our examples; but the above will suffice to show the reasonableness of scepticism as to all Hieroglyphic readings unprovided with *diplomatic* guarantee of their accuracy.

There are also various signs interpreted by M. Bunsen in his lists of royal names, which find no place whatever in his Tables.

We must add, that it so happens, none of these anomalies affect the substantial value of his historical speculations.

tion by the Shepherds, during the XVth, XVIth, and XVIIth. There can be no doubt that this work contained in the mass an authentic, however in the details confused and exaggerated, digest of Egyptian history. But a meagre epitome of it has reached us, and that, as we have seen, in two texts or versions. The text of Eusebius, however, if we may trust their common Editor Syncellus, was but a transcript of that of Africanus; and in the same quarter such discrepancies as occur are described as corruptions on the part of the copyist. M. Bunsen further assumes that Africanus also derived his extracts from a secondary source, an opinion from which we must dissent, for reasons to be stated in the sequel. As regards, however, the parallel versions of the Christian compilers, he gives, very properly, the preference to Africanus, unless in cases where the variety may appear to *originate* in errors of the text of that author; and we shall in our own remarks be guided by his example. It is certain, that, even in their best authenticated form, these lists have reached us in a very incorrect state, especially as regards numerals; and as the sum of *epilogus* subjoined to each book, or dynasty, differs in several cases widely from that which results from the reckoning up of the separate entries, it is the less easy to form any near estimate of the numbers of Kings or years it may originally have contained. We here subjoin a table of dynasties, reigns, and years, after Africanus, with the actual sum, and the epilogus, for each book:—

Book I.			Book II.			Book III.		
Dyn.	Reigns.	Years.	Dyn.	Reigns.	Years.	Dyn.	Reigns.	Years.
I.	8	263	XII.	7	160	XX.	12	135
II.	9	302	XIII.	60	453	XXI.	7	114
III.	9	214	XIV.	76	184	XXII.	9	116
IV.	8	284	XV.	6	284	XXIII.	4	89
V.	9	218	XVI.	32	518	XXIV.	1	6
VI.	6	203	XVII.	43	151	XXV.	3	40
VII.	70 (Eus. 5)	(70 days)	XVIII.	16	259	XXVI.	9	150
VIII.	27	146	XIX.	6	204	XXVII.	8	124
IX.	19	409				XXVIII.	1	6
X.	19	185				XXIX.	4	20
XI.	16	43				XXX.	3	38
Sum,	200	2267	Sum,	246	2213	Sum,	61	834
Epil.	192	2300	Epil.	96	2121			

We have thus a period, on the most moderate caculation, of about 5220 years, and a series of 350 Kings, terminating 340 years B.C.; so that the foundation of the Empire of Menes dates some 5500 years B.C., or 2300 years prior to the Deluge; according to the most liberal view of Scripture chronology. The excess, it is obvious, must be sought solely, or chiefly, in the first two books. Some of the entries in these earlier dynasties: 70 Kings in 70 days, 76 Kings in 184 years, &c., sufficiently bespeak corruption or misunderstanding. In the later period, on the other hand, the dates are in a great degree checked and confirmed by synchronisms of parallel authentic history. M. Bunsen's ingenuity has discovered a similar check for the earlier dynasties, from the Ist to the XIIth inclusive, in the Table of Eratosthenes.

This document gives a succession of 38 Kings, called 'Theban,' or 'Theban-Egyptian,' commencing, like Manetho's first dynasty, with Menes. To each name its Greek interpretation, with the years of reign, is appended. The whole series extends over a period of 1076 years. The integrity of the numbers, both in the sum, and (with trifling exception) in the single reigns, is guaranteed by the Commentary of Syncellus. The letter-text has here and there suffered damage, but not sufficient to obliterate its substantial import. M. Bunsen was not the first to observe the very obvious identity between many of the names in this series, and others among the fifty-eight which alone have reached us, in Manetho's twelve first dynasties; but he was the first to appreciate, and turn it to profitable account. Assuming the names and numbers in these dynasties to have been, in whatever mode, unduly multiplied or exaggerated—and considering the fact of this Table having been executed by express order of Ptolemy, shortly after the publication of Manetho's lists, with the high reputation of its author as a Chronologer and Critic—it may reasonably be supposed, that the commission had been assigned him for the special object of correcting or purging the more apocryphal parts of the work of his predecessor. In order to turn this hypothesis to full account, it was, however, necessary to have some more specific evidence of the supposed defects on the part of Manetho, or his authorities. Their existence has been abundantly proved by M. Bunsen's analysis of extant monuments—the same as, or similar to, those from which Manetho himself borrowed his materials. The sources to which he chiefly refers these anomalies are:—I. The admission in Manetho's lists, parallel to the imperial lines of Pharaohs, of lesser contemporaneous dynasties excluded by Eratos-

thenes;* II. That of contemporaneous sovereigns of the same dynasty, whether as colleagues, rivals, regents, or otherwise; III. Ambiguity and confusion in the original registers of royal succession. To which we shall add, IV. Manetho's own want of good faith or critical judgment in the use of his authorities.

With regard to the first of these expedients—the theory of contemporaneous dynasties—we shall here be content with stating generally that we are at issue with M. Bunsen. Our reasons of dissent will be offered in the sequel. The validity of the other two he has fully succeeded in establishing. The occurrence of contemporary reigns is implied even in the popular traditions. Their frequency, at various periods, is vouched for by monumental inscriptions, bearing double dates, for the years of joint sovereigns, usually father and son, or near relatives, according to the respective epochs at which they may have succeeded or been associated. There seems equal reason to believe, on the same evidence, that usurpers, regents, &c., may have found a place, if not in the better digested records, at least in those to which Manetho deferred, or in his own lists, by a misunderstanding of these authorities. For example: in the genealogical monuments of the latter part of the XVIIIth dynasty, we find (vol. iii. p. 88, *seq.*) two brothers and a sister of its ninth King Horus, with the wife of the one brother, a son of the other,

* M. Bunsen's theory, therefore, has two fundamental points in common with that of Marsham—the assumption of contemporary dynasties, and the adoption of the Table of Eratosthenes as the elder Imperial line of Pharaohs, and as a key to the chronology of the period. However different in the details, the principle is the same. M. Bunsen is doubtless entitled to the sole credit of having turned it to critical account, as he possessed a better supply of subsidiary resources; but we must, for the honour of our countryman, demur to any further claim to absolute originality in regard to it. We regret, too, that M. Bunsen, in his retrospect of the previous schools of Egyptian research, (i. p. 281,) should have treated Marsham's speculations, generally, with such unqualified, and, as we think, unmerited harshness. In those days all was conjecture; and Marsham's were, upon the whole, the most ingenious of his age. This severity is the more striking, as contrasted with the favour shown to his adversary, Perizonius; whose theories, as M. Bunsen admits, were quite as groundless; and who attacks Marsham most bitterly on the very point where M. Bunsen was bound to defend him;—the value he attached to the Table of Eratosthenes—stigmatized by Perizonius (c. v. p. 69) as an utterly worthless document.

and a Husband of the sister, all bearing titles of royalty. The names of neither of the two brothers are entered in Manetho's list; but, to make amends, that of the Queen of the one is entered three different times—once for herself, and once for each of her male relatives; while the princess-royal and her husband have each a place as male sovereigns. M. Bunsen has also shown, on the same authority, that where such double or triple reigns were admitted in the registers, the Egyptian practice was to assign each its full complement of years;—those of associate as well as of separate sway. For example: a certain King, 20 years after his accession, associates his eldest son. The old King reigns other 20 years, and dies. His son survives him 20 years. It is obvious that the whole period of actual time included in the two reigns is but 60 years. Yet it is equally certain that the old, and the young King, reigned 40 years each; and these two sums, appended to their names in the lists, would involve a chronological error of 80 for 60 years.

Specific evidence of this anomalous mode of reckoning, is furnished by a collation of the lists of Manetho and Eratosthenes with the Turin Papyrus. This document is a Catalogue of Dynasties, with names and dates, similar to those of Manetho, written in the hieratic text, or running hand of the pure Hieroglyphic, habitually used in cartaceous records. The dynasties are distinguished by red ink, in the first line of their respective entries. It comprised, when entire, a copious list of sovereigns, from Menes down to the epoch of its own execution, under the XIXth dynasty, about 1400 years B.C. It may, therefore, be considered as a remnant of the original records upon which the lists of Manetho were founded. It is in a very tattered condition; but, by the ingenuity of Seyffarth and Lepsius, the fragments have been so far recomposed as to indicate, with tolerable accuracy, the order of succession. Where the names have been preserved in any degree of continuity, its collation with Manetho and Eratosthenes, while evincing a general correspondence in the three lists, amply bears out the anomalies above referred to, in the two of native origin. The XIIth dynasty, one of the best identified in the Papyrus, consists, in that document and in Manetho, of eight reigns, comprising a sum of 213 years in the former, and from 176 (Afric.) to 245 (Euseb. preferred by M. Bunsen) in the latter. The corresponding reigns of Eratosthenes are but four, with 147 years. The excess of numbers in the two former authorities, as M. Bunsen convincingly proves, (vol. ii. p. 278, *seq.*,) is owing (apart from their own internal inaccuracies) to the causes above mentioned;—the admission of associate

sovereigns, and the entry of each reign in the gross, without deduction for the period of simultaneous rule. The XIIth dynasty, it may be remarked, was one of the most flourishing epochs of the old Empire. But the practice of associating colleagues in royal authority is the usual characteristic of unsettled governments; and may therefore, judging from the above example, have been carried by weak or capricious Princes to an extravagant excess. What was to prevent a King, with half a dozen or more sons and brothers, from investing them all with a nominal share in the royal dignity, and constituting them, perhaps, with himself, a separate family dynasty? And if each of their periods of incumbency was entered separately at full length, in the archives, we might, in this way, within a few centuries of time, have Kings with reigns enough to cover a good thousand years. The discrepancy in the native registers is further evident from the fact, that the Papyrus contains more dynasties in the same period than Manetho. The mode of subdividing them in either document appears, from this and other evidence, to have been quite arbitrary. The round number of XXX, adopted by Manetho, is plainly conventional. M. Bunsen understands the same plan of entry to have been followed, in regard to the contemporary dynasties which he admits into his system. Suppose, for example, ten Kings to reign 200 years in Memphis, simultaneously with nine in Thebes. The annalist, instead of entering the two sets in parallel columns, or otherwise, so as to indicate their belonging to the same period, arranged them consecutively; so that the list would show 19 Kings and 400 years. We are under the necessity, as already said, of rejecting these contemporaneous dynasties; but, admitting them to have existed, it seems probable, from the analogy of the cases above quoted, that such would have been the mode of dealing with them.

The anomalies of royal succession in the sculptured monuments are still more striking; as was perhaps to be expected in documents prepared for the most part with a particular object, or to gratify the caprice of individual sovereigns. In the great genealogical table of Abydos,* the names of the XVIIIth

* This table, as restored by Lepsius, contains three rows of royal rings, 26 in each row,—in all 78. The rings of the lower row, with the last of the centre one, consist solely, in alternate pairs, of the name and surname of Ramses the Great, (third King of XIXth dynasty;) whose sitting figure also occupies the left side of the table, receiving the

dynasty follow immediately upon that of the last king but one of the XIIth; the whole of those for the intermediate period being omitted. In another royal series, depicted on a palace of Ramses the Great, at Thebes, we see, in the first rank, Menes, chief of the 1st dynasty. Then follows Mentuatep, a King of a much later dynasty, but prior to the Shepherd invasion, succeeded, in the third place, by Amos first King of the XVIIIth. Each of these personages is separated from his monumental neighbour by many centuries, and dozens of kings, in the lists. In a similar series, on a tomb at Qurnu, containing two rows of royal personages (in all 26,) the lower row is headed by the same Mentuatep, followed by the same Amos, above mentioned. In the upper row the first place is given to Amenophis, second King of the XVIIIth dynasty; behind him sits his wife, and behind her Sekennen-ra, another King of the same early dynasty with Mentuatep. In none of these cases, or in others similar to which we have had access, is there any inscription of such a length or nature as could have supplied a solution of the enigma. In the left compartment of the great table of Karnak,* the order of succession in the XIIth and neighbouring dynasties, and probably in others where we have less means of ascertaining it, is inverted and contorted in the most unaccountable manner. The names in the upper half of

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homage of his ancestors. The rings immediately prior to his own in the centre row, are the surnames of his predecessors of the XIXth and XVIIIth dynasties, preceded by those of the XIIth, as stated in the text. From hence upwards, the succession of the earlier Kings, in so far as recognisable, appears to be more orderly. A great many rings are now effaced. This table, with the Turin Papyrus, and most of the other authorities here appealed to, are cited from Dr Lepsius' recently published 'Selection of the more important Historical Monuments of Egypt;' where, besides many hitherto inedited, the principal documents already familiar to the public are presented to us in that rigid state of correctness for which the name of the compiler is so ample a voucher. The return of this distinguished scholar, within the last few months, from the banks of the Nile, where he has for several years past presided over the Scientific Commission so munificently fitted out by his enlightened sovereign, cannot fail to be pregnant with important results to Egyptian historical research.

* This singular record, pictured on the walls of a small chamber in a Theban structure of the XVIIIth dynasty, exhibits, (as in the annexed scheme,) in four horizontal rows, sixty-one sitting kings or royal personages. Each has his surname and the symbol 'deceased' appended. These rows are divided through the centre into two compartments.

the right compartment offers, generally, the same order of succession as the XIIIth and following dynasties in the Papyrus; but in such a manner that the papyrus contains at least two for one of those in the Table, the points of correspondence being separated here and there in the former, by entries to which no parallel occurs in the latter! The difference in the titles appended to the royal rings throughout this Table, also implies a difference of character or rank in the personages whose names they contain. Among other examples there is a series of six in one row of the left compartment; which M. Bunsen (vol. i. p. 68, *seq.*) pronounces, on satisfactory grounds, to indicate collaterals of the reigning family. Yet they follow the same line of succession, and otherwise participate in the monarchal honours of their companions. A similar line of 13 cadets has been observed by him in the upper row of the Table of Abydos. 'Here 'we have,' as he aptly remarks, (vol. ii. p. 189,) 'specimens of 'historical catalogues by which the names of the Pharaohs of 'the ancient empire might have been infinitely multiplied; for 'both here, and in the parallel case of Karnak, the personages are

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The figures in that to the left of the beholder, in all 31, face to the left, the remaining 30 to the right; so that the inner figures, at the junction of the two compartments, sit back to back.

Thutmes III.	8	7	6	5	4	3	2	1	1	2	3	4	5	6	7	8
	16	15	14	13	12	11	10	9	9	10	11	12	13	14	15	16
Thutmes III.		25	27	28	29	30	31	17	17	18	19	20	21	22	23	
	26	24	23	22	21	20	19	18	24	25	26	27	28	29	30	

In front of each pair of rows, to the left and right respectively, (in the restoration of Lepsius,) is a standing figure of King Thutmes III., fifth King of the XVIIIth dynasty, offering sacrifice to the sitting figures, as the Manes, doubtless, of his predecessors. About fifteen of the whole number of names are now effaced. The numerals in the scheme represent the chronological order—or rather disorder—of the figures, as illustrated by M. Bunsen. Of the right compartment we have spoken in the text. The left compartment may be held to represent generally, with great discrepancy in the details, the period embodied in the Table of Eratosthenes. The succession of the XIIth dynasty, (Nos. 25 to 31 inclusive,) contorted as it is, cannot well be questioned. But we have some doubts of the accuracy of the rest of M. Bunsen's arrangement, which it would require a dissertation on the monument incompatible with our limits to explain.

'all equally styled Lords of Upper and Lower Egypt.' How far this chronological juggling may have been intelligible to the learned of the ancient world, may be a question; but it could hardly fail to puzzle the Manethos of the Alexandrian era; and it is obvious what ample scope it offered to a patriotic compiler, with but a very slight compromise of his historical conscience, to magnify the antiquities of his country to any given extent.

We have, we trust, sufficiently made good our former remark, that the eccentricity of the Egyptian character was largely displayed in their modes of registering events. That a people, however, so intelligent, as well as methodical in all their proceedings, should have been contented, in its naked absurdity, with so preposterous a plan of mystifying their national annals, is not probable. In pronouncing the Egyptian chronologers to have been mad, we may at least do them the justice to suppose there was method in their madness. M. Bunsen accordingly conjectures that these more vague documents were provided with a key, or illustrative commentary, adjusting the dates and sums, and otherwise clearing up, to the practised eye of the old Hierogrammatist, the irregularities of the process. That Eratosthenes was in possession of some such key, whether elicited by his own ingenuity, or borrowed from native interpreters of better judgment than Manetho, seems certain. M. Bunsen, however, (vol. i. p. 122,) also urges, in favour of the latter historian, a claim to a nearer insight into the spirit of his authorities, on the strength of a passage of Syncellus, the full value of which he considers to have hitherto been overlooked. We have seen that, on the lowest computation, the sum of the whole lists of Manetho gives about 350 reigns and 5220 years. But this text of Syncellus mentions a reduction of 'the XXX dynasties, described in the three volumes of Manetho, to 113 generations, 'and 3555 years.' We cannot agree with M. Bunsen in the importance he attaches to this passage, as embodying a statement of Manetho's own views. The existence of any such digest of his numbers on his own part, or of any key to his lists, such as we have above supposed in the case of Eratosthenes, is incompatible with the entire ignorance shown of any thing of the sort, by Africanus, Josephus, and every other author who, either at first or second hand, quotes the work of Manetho. We have already stated our dissent from M. Bunsen's view,—that Africanus knew Manetho but from secondary sources. It is supported by no evidence, and M. Bunsen seems to have been led to its adoption, chiefly by what we must consider his over-estimate of Manetho's critical fidelity; and a consequent desire to shift upon others the

responsibility of any confusion or inaccuracy observable in his lists. That the original work of Manetho was extant in the time of Josephus is not disputed; and it is most improbable that during the century between that author and Africanus it should have perished,—considering the interest attached to it by the early Christian chronologers. Still less likely is it that, if still extant, it should not have been carefully studied by a Father of the Church, characterised by M. Bunsen himself as distinguished both for sound learning and judgment; and for zealous research into the original records of Egypt and the East. M. Bunsen's views seem here, indeed, not to be very clearly digested. In his commentary on the above obscure text of Syncellus, he first surmises it to be an extract from Africanus himself; and immediately afterwards, as if aware of some incongruity, resorts to the really startling hypothesis, that Syncellus, in the Byzantine darkness of the ninth century, may have been in possession of the entire history of Manetho, which was unknown to Africanus, the enlightened Christian chronologer of the second;—the same Syncellus who, elsewhere throughout his voluminous work, invariably quotes Manetho at second-hand from the same Africanus! We are persuaded that M. Bunsen, on re-consideration, will himself perceive the inadmissibility of this hypothesis.

The question of the 'key,' however, appears to admit of more tangible proof, from a quarter to which no suspicion attaches. Josephus—admitted to have borrowed from the original—gives us the XVIIIth and XIXth dynasties, not only with that minuteness of chronographical detail, years, months, &c., which characterized the Egyptian records, but with a long verbatim extract from the illustrative text of Manetho. We have seen, that in the former dynasty occur, in one succession, the names of four sovereigns, whose collective years amount to about forty; every one of whom is, chronologically speaking, a supernumerary, their reigns being contemporaneous with that of the preceding King, Horus. Yet Josephus enumerates them without comment, and in the most unequivocal terms, as independent consecutive sovereigns, with their respective complement of years. This were hardly conceivable, had any such key been appended to the list,—especially on the part of a writer so ready to detect anomalies in the text of his Pagan authorities. The same is the case with the superfluous names of the Ramses family in the XIXth dynasty, also so ingeniously detected by M. Bunsen; and for which, with other lesser examples in the early part of the XVIIIth, Manetho, or his native authorities, are no less obviously responsible. With such proof of the absence

of all key in the case of the XVIIIth and XIXth dynasties, it were quite arbitrary to assume its existence in remoter and darker periods. With the evidence, indeed, which M. Bunsen's own acuteness has elicited throughout the whole lists, of confusion and blundering on the part of Manetho—blunders which, from their very nature, could proceed from none but a native compiler—we are the more surprised at the tender partiality displayed by him all along towards their author; at the expense of so respectable a chronologer as Africanus, against whom no such charges can be substantiated.

To return, however, to the passage of Syncellus. It obviously represents an abridgement, by some later chronologer, of the excessive numbers of Manetho. The text is corrupt, as the old commentators have remarked, and chiefly in its principal clause: Των γαρ . . . . ριγ γενεων, ἐν δυναστειαις Χ ἀναγεγραμμενων αὐτω [ν ὁ χρονος] τα παντα δυνηξεν ἐτη γφνέ κ.τ.λ. It is clear, at least, that Manetho's epitomist is not here Manetho himself; and old Chronus, however competent for the task, can hardly be admitted as his substitute. We think we can discover in the letters in parenthesis, an abreviation of ὁ χρονογραφος, the familiar title of Apollodorus, Editor and continuator of Eratosthenes. The word αὐτῳ refers to Manetho himself, not to his numbers. The 113 generations and 3555 years are thus probably the entire sum for the Egyptian monarchy, according to the system of Eratosthenes, of which, in his table, we have the earlier subdivision.

We should here have the more conclusive evidence of that table having been originally prepared as a check on the less critically digested annals of Manetho. Its value at least, in this respect, has been placed beyond a doubt, by M. Bunsen's ingenious collation of the two systems. Of this important part of his work we here subjoin a Synopsis:—

Eratosthenes.		Manetho.		Monuments.
		I. *Dyn. Thinite.*		
1	Menes 62	Menes 62		Mena
2	Athothis 59	Athothis 57		Atet
3	Athothis 32	Kenkenes 31		Teti
		Uenephes 23		
4	Diabies ..... 19 φιλιτιδες	Usaphaes 20		
5	Pemphos .... 18 ἐφαχλιδης	Miebaes 26		
		Semempses 18		Smenteti ☥
		Bieneches 26		
		II. *D. Thinite.*		
		Boethos 38		
		Kaiechos 39		Kekeu
		Binothris 47		
		Tlas 17		
		Sethenes 41		Sent
		Chaires 17		
		Nephercheres 25		
6	Momcheiri... 79 ἡγησανδρος πιεισσομιλης	Sesochris 48		Ases ☥
		Cheneres 30		
		III. *D. Memphit.*		
		Necherophis ... 28		Aseakef
7	Stoichos-Ares... 6	Tosorthos 20		
8	Gosormies 30	Tyreis 7		Tetkera
9	Mares 26	Mesochris 17		
10	Anoyphis 20	Soyphis- 16		Chufu
11	Sirios 18	Tosertasis 19		Ân ☥
12	Chnoubos-gnevros ... 22	Aches 42		Aaksu
		Sephuris 30		
		Kerpheres 26		
13	Rayosis 13			Raseser
14	Biyres 10	IV. *D. Memphit.*		Sahura ☥
				Snefru ☥
15	Saophis 29	Soris 29		Chufu
16	Saophis 27	Souphis 63		Chnemuchufu
17	Moscheres 31	Souphis 66		... neterke
18	Mosthes 33	Mencheres 63		Menkeura
		Ratoysis 25		
		Bicheres 22		
		Sebercheres 7		Nefrukera
19	Pammes 35	Thamphthes... 9		Schafra
		V. *D. Elephant.*		
				Snefru ☥
		Ousercheres ... 28		Nefrukera ☥
		Sephris 13		Nefrukera ☥
				Tetkera ☥
		Nephercheres 20		Nefrukera ☥
				Merenher ☥
		Sisires 7		Snefruke ☥
				Raenke ☥
		Cheres 20		Nefrukera ☥
		Rathuris 44		Nefruke
				Nefruke
				Snefruke ☥
				Merenra
		Mencheres 9		Menkeher ☥
		Tatcheres 44		Tet ☥
		Onnus 33		Unas ☥

Eratosthenes.		Manetho.		Monuments.
		VI. *D. Memphit.*		
		Othoes 30		
		Phius 53		
		Methusouphis.. 7		Merenra ☥
20	Apappus 100	Phiops 100		Pepi ☥
21	Echeskosokaras 1	Menthesuphis.. 1		Mentuatep
22	Nitokris 6	Nitokris 12		
		VII. *D. Memphit.*		
23	Myrtæus 22	70 Kings Afr. 5 ..... Euseb. days... (70)		
		VIII. *D. Memphit.*		
24	Thyosimares 12			Nantef ☥
25	Sethinilas 8	27 Kings Afr.		Nantefna
26	Semphucrates 18	9 ..... Euseb.		Rama... ☥
				Ra-Snefruke ☥
27	Chouther τουθης τυφαιος 7	Years... 146		Mentuatep-nebtura ☥
28	Meyres 12			Ranubter ☥
				Seserenra ☥
29	Chomaephtha..... 11			Nachtenra ☥
30	Soikunios..... 60			Sekemmenra ☥
		IX. *D. Heracleop.*		
		Achthoes 18 Kings ... 409		
		X. *D. Heracleop.*		
		19 Kings 185		
		XI. *D. Diospolit.*		
31	Petesathyres..... 16	16 Kings..... 43		
		XII. *D. Diospolit.*		
32	Ammenemes 26	Ammenemes ... 16		Amenemhe ☥
		Sesouchosis..... 46		Sesortosen ☥
33	Stammenemes ... 23	Ammenemes ... 38		Amenemhe ☥
34	Sistosichermes ... 55	Sesostris..... 48		Sesortosen ☥
		Lachares..... 8		Sesortosen ☥
35	Mares 43	Ameres 8		Amenemhe ☥
		Amenemes..... 8		Amenemhe ☥
		Skemiophris.... 4		Sebeknefru ☥
		Part of XIII. *D. Diospolit.*		
36	Siphtha 5			
37	Phruoro 19			
38	Amythartæus..... 63			

The Greek versions of the names of Eratosthenes have here been given, only in cases where we have occasion, in our own comments, to refer to them. Of the monumental names,* those derived from the Table of Abydos are marked by an α; those from Karnak by a κ; those from the Turin papyrus by a π. Where extant in more than one, the letters also show it. The rest are from miscellaneous sources. For M. Bunsen's reduction of Manetho's numbers, as equipoised to those of Eratosthenes, we must refer to his own text.

The correspondence of many of the names in the lists of the two authors, especially in the Ist, IVth, and XIIth dynasties, is self-evident. Those of Menes, Athothis, Souphis, Nitocris, Amenemes, are the same; while various others offer a very near resemblance, though not always in their existing order. That this is not the result of a mere general sameness of royal appellatives, like that of our Edwards or Henries, is evinced by the circumstance, that in the far more numerous names of the dynasties subsequent to the XIIth, no such correspondence can be traced. The full value of M. Bunsen's theory depends, however, on his corrections of the text of both documents; which are often as happy as they are conclusive,—involving additional identities of names and numbers. That both have reached us in a mutilated state is certain. We also willingly concede M. Bunsen's further claim to indulgence, in his efforts to enlarge the limits of the connexion, on the ground of the difficulties necessarily experienced by his authorities in transferring the Egyptian names to the Greek idiom and orthography, of the license which Greek writers notoriously permitted themselves in such cases for the sake of euphony, and the consequent changes or corruptions the names may have undergone, even in the original texts. The basis of the whole theory of adjustment is the hypothesis,—I. Of the admission by Manetho of contemporary dynasties and sovereigns; II. Of a multiplication or repetition of names in his lists, through error or misunderstanding, on his own part, or that of his

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* It may here be remarked, that from the VIth dynasty downwards, the full royal name comprises two rings; the one headed by the *bee and plant*, containing the imperial title or surname; the other, by the *goose and disk*, containing the family or proper name. For the most part, only one is given in the inscriptions, usually the former, as the more distinctive title. The earlier Kings have but one name, frequently without heading. Unless in special cases, where both require to be referred to, our own list offers but the one of most familiar occurrence in the texts.

transcribers. It were impossible, within our limits, to offer even a satisfactory abridgement of the author's development of this theory. We must be content to indicate a few of its more salient points in the way of specimen. That the conduct of his intricate line of analysis is distinguished by remarkable sagacity and critical acumen, will be admitted by all competent to appreciate it. Our chief objection to it is, that he occasionally overshoots his mark; and while striving, from an excess of confidence in his own resources, or in his dexterity in their application, to prove too much, damages perchance here and there the effect of his more solid conclusions. He may be compared to a valiant knight-errant, who, rendered Quixotic by victories over Kings or Giants, runs a tilt now and then against a stone-wall or a windmill. A concise view of his treatment of the first portion of the series, (vol. ii. p. 33, *seq.*,) will afford a fair general sample both of the strength and the occasional weakness of his method.

The first two names are the same in each list, and the years of reign differ but slightly. In the third pair of names there is no resemblance, but the identity is supported on the strength of the nearly equal numbers in the years, 32 and 31. On this correspondence M. Bunsen, it may be remarked, for reasons not to us quite satisfactory, professes to place even a greater reliance than on that of names; and, in order to obtain it to the letter, he indulges occasionally in subtle speculations, which tend perhaps as much to complicate as to corroborate his argument. The inference, however, in the present case, is not unreasonable; and Kenkenes may be allowed to pass as a different title of Athothis the Second. In the fifth and seventh Kings of the two lists respectively, the numbers tally, while the names have a certain general resemblance. M. Bunsen corrects that of Eratosthenes into Semphos, and supposes the principal element of both to be Sem, the title of the Egyptian Hercules; which conjecture derives support from the translation appended by Eratosthenes to his name, Heraclides. There remains the fourth of Eratosthenes, Diabies—19 years—to be identified with one of the four remaining names of Manetho. The sixth of Manetho, Miebaës—26 years—offers the greatest resemblance of sound. M. Bunsen, however, in deference to his arithmetical partialities, prefers matching it with the fifth, Usaphaës—20 years. Then follows a very ingenious, though we cannot say convincing argument, to prove that Usaphaës, Uenephes, and Bieneches, are mere Manethonian corruptions of Mnevis, the genuine proper name of the King in question,—itself borrowed from that of the Bull-god Mnevis; and

that the original form of both Diabies and Miebaës is Maebaës; which is itself but a surname of Mnevis, signifying, in the sacred dialect, 'Lover of the Bull.' In corroboration of this latter conjecture, appeal is made to Eratosthenes' Greek version of the word, φιλόταυρος, which M. Bunsen, very happily, corrects into φιλότανρος. Our own objections to this theory are—first, that Manetho, in a comment to the sequel of his list, the authority of which M. Bunsen does not dispute, describes the worship of the Bull Mnevis as having been first introduced under a subsequent dynasty; and secondly, that the royal name Mnevis in Diodorus, to whom alone M. Bunsen is indebted for it, is, we are satisfied, no other than that of the patriarch Menes himself,—misunderstood or miswritten by that blundering author. There being, however, thus secured an—upon the whole—solid and reasonable adjustment of the chief points at stake, we scarcely think the author's further attempt to make out, in the way of corollary, that the number 28 of Manetho's 4th reign is a mistake for 13; or that the two other numbers 26, of the following reigns, are but repetitions of each other, and each a duplication of the conjectural 13, &c. &c., adds much to the value of his main proposition.

The names of Menes, and the two Athothes, are competently provided for by the monuments. The identity traced by M. Bunsen, between Semempses and Smenteti, the right-hand name in the upper row of the Table of Karnak, is not so satisfactory;—the radical Hieroglyphic of the latter being not Sem, but Men, a totally different element.

The IId dynasty, in as far as regards any connexion with Eratosthenes, is discarded; together with the Vth, IXth, and Xth, as contemporary with the IIId, VIth, VIIth, and VIIIth, respectively; of which more in the sequel. The identity traced between Momcheiri of the Table, and Sesochris of Manetho, is but an apparent transgression of this rule; the two last Kings of the IId dynasty being assumed, for reasons which we cannot admit, to have been misplaced by Manetho's transcribers, and to belong properly to the commencement of the IIId. The argument, however, as confined to the mere parallel of the names, is ingenious. The original common reading is supposed to have been Sesorcheres. The translation appended to the former name, Της ἀνδρος, is corrected, very happily, into ἡγησανδρος; Sesor, the first element of the Egyptian word, signifying also 'Leader.' The additional epithet of Eratosthenes, περισσομελης, is also aptly provided for, in the notice, appended by Manetho to his name, of the gigantic stature of its proprietor.

Passing over the intermediate period, we come to the more

prominent names of the IVth dynasty—Souphis, Mencheres, &c. The correspondence of these with each other in the two lists—with the monumental titles, Chufu, Chnemu-chufu, Menkera—and with the Cheops I. and II., Mykerinus, and Chephren, of Herodotus, has been partially noticed by others, but more fully developed and confirmed by M. Bunsen. These, we need scarcely remark, are the Kings so celebrated by our classical authorities as builders of Pyramids; and, doubtless, the success that has attended M. Bunsen's efforts to elucidate the history of these wonderful structures, forms one of the strongest claims of his work on the public interest. Their dark, and hitherto dumb, recesses, have now been made to tell their own tale in the clearest accents of historical truth. For the materials of this part of his labours, the author has been chiefly indebted to the munificent enterprise of our countryman, Colonel Howard Vyse;—an enterprise which, as M. Bunsen himself remarks, would have done honour to the proudest sovereign in Europe. This gentleman, during the years 1837-8-9, planned and executed, with the aid of an accomplished architect, at an immense cost, and from his own private resources, a systematic and most successful series of excavations, in and around almost every member of these several groups of gigantic *Mausolea*. Previous to this undertaking, the existence of contemporary Hieroglyphic inscriptions on their walls had not been ascertained; and in the absence of such a guarantee of their real origin, speculation was rife as to their having been the work of the Shepherds, or even of some earlier, perhaps antediluvian, race of foreigners. Colonel Vyse's researches have now brought to light the names, written in the purest primeval style, of six or seven Pharaohs, connected with these monuments as builders or dedicators; and among them those recorded by Herodotus, Diodorus, and Manetho. These, with some other rare and scanty inscriptions, scratched rather than sculptured on the walls of their *adyta*, for the most part as builders' stone-marks, afford, by the very homeliness of their execution, evidence, both of their own genuine originality, and that, among the ingredients of the sublime caprice which led to such mighty undertakings, mystery and concealment entered as largely as even pride and ostentation. They are monuments, not more of the grandeur of these early Pharaohs, than of the intense power on their minds, of that solicitude for the fate of the body after death, which continued ever after so characteristic of the Egyptians. The enormity of their dimensions, and the peculiarity of their structure, bespeak the same twofold object,—to render the corpse within inaccessible, by the same means that perpetuated the fame of its former tenant. Of what avail, then, were pompous inscriptions, or gor-

geous blazoning, upon walls raised for the express purpose of eternally excluding the gaze of human curiosity!

The few remarks we may have to make on the dynasties from the Vth to the XIth inclusive, will be combined with those we are about to offer on the general question of contemporary lines of succession. For M. Bunsen's restoration of the XIIth dynasty, we must refer the reader to his own text. Suffice it to say, that it is a most brilliant and successful specimen of critical analysis, to which it were impossible within our own limits to render justice.

In proceeding to state our objections to the author's contemporaneous theory, we must observe, that the question here is, not so much whether in Egypt, as in other countries, during periods of internal anarchy, rival members of the Kingly caste may not have succeeded in temporarily establishing an independent rule in different localities. There are symptoms of something of this nature, in the allusions by Josephus to the native chiefs of Upper Egypt, under the vassalage of the Shepherds. But we deny that the fundamental laws of the Egyptian monarchy, or consequently the Priestly registers, recognised as legitimate such a system of divided Empire as we are here called upon to admit. Our objections are:—1. The absence of all historical testimony as to its existence; 2. Its great improbability, as it appears in the scheme of M. Bunsen; 3. The internal evidence of Manetho's own text to the contrary; and, lastly, that the reduction of that historian's numbers, to effect which it has been resorted to, may be otherwise better provided for.

The first objection we consider in itself as nearly conclusive. Had such a system been recognised during the earlier, and upon the whole most flourishing period of the Egyptian Empire, it seems hardly conceivable that no allusion to it should have been dropped by a single author, sacred or profane. Setting aside those accounts to which a more critical value attaches, such silence on the part of the organs of popular tradition were perhaps still less probable. Had the petty towns of Heracleopolis or Elephantina been dignified, in these ancient and glorious days, as seats of an independent line of Pharaohs, it was not likely that the fact would have been kept secret in later times; or that so curious a feature in the early history of the country should have been overlooked by Herodotus, and other diligent retailers of local and vulgar legend. As regards Manetho, most of the arguments formerly urged relative to the supposed Key to his lists, here apply with equal force. Had his own text held out so powerful a handle as this would have been, to the subtle chronologers of the early Biblical school, for reducing his un-

manageable numbers, it were impossible to explain, not merely their failure to seize and turn it to most unscrupulous account—even far beyond what the letter of their author justified—but their, to all appearance, absolute ignorance of any thing of the sort. Even admitting M. Bunsen's hypothesis, that Africanus knew not Manetho in his integrity, or had carelessly perused him, we can as little believe, that among the secondary sources he consulted, and which must at least have been very copious, so all-important an element of the original could have been so studiously suppressed. That Eusebius, in as far as he may have had access to additional authorities, was quite in the dark, is evident, from his having started the notion of contemporary dynasties as an independent theory of his own. Had it been in his power to confirm it by an appeal to Manetho, he would not have failed to do so. Nay, even upon M. Bunsen's still less tenable supposition, that an entire copy of Manetho, denied to Africanus and Eusebius, had been providentially preserved for the use of Syncellus, we should consider it equally inexplicable, that throughout the voluminous commentaries of that learned Monk, not a suspicion on his part should be discoverable of the existence of this—to him—most momentous element of his author's system.

But while no direct testimony could be expected, either from Manetho or his epitomists, as to what we do not believe ever entered his head, we have, at least, indirect evidence of his ignorance of any such *ordinary* or habitual breaches in the unity of the Egyptian Empire, in his incidental allusions to them in *extraordinary* cases. For example, he describes the XVIIth dynasty, during the Hykšos usurpation, as consisting of forty-three (tributary) Theban Kings, and as many (supreme) Shepherd Kings. M. Bunsen, as will be seen, would alter the literal meaning of this passage. We are not convinced of the necessity of such alteration; but even his proposed new reading would not here affect the spirit of the text. In either case we find, in the extraordinary instance of two sets of Kings actually reigning at the same time, in different districts,—the foreigners in Memphis, the native monarchs in upper Egypt,—that Manetho expressly classes the two *as contemporary*, in separate columns. If there be any truth in the rule, that every author is his own best interpreter, we are surely entitled to infer, that where other such cases occurred, he would have done the same; and, by consequence, that the IId and IIId, Vth and VIth, and following dynasties respectively, being so palpably noted as consecutive, could not be meant to be simultaneous. To this may be added, that during the later Empire, from the XVIIIth downwards, or during the

whole period into which we have a clear historical insight, no contemporary dynasties existed, as M. Bunsen himself admits. Yet, during this period, Manetho describes them as Theban, Tanite, Saïte, &c., in alternate succession—precisely in the same terms as in the old Empire—obviously with reference merely to the native place of the head of each royal house; and upon no critical principle can we consent to put an interpretation upon one portion of an author's text, so plainly belied by his own authority in another.

The main argument on which M. Bunsen's theory seems to rest, is founded on the distinctive title—*Theban*, or *Theban-Egyptian*, given to the Kings in the catalogue of Eratosthenes. This title he interprets as indicating an uninterrupted possession by those Kings of the ancient imperial seat of government; and thus indirectly distinguishing them as the *Imperial* line, from the lesser lines specified by Manetho as Thinite, Elephantinean, &c. This interpretation, however specious, is, we are satisfied, fallacious. Considering that Menes, the founder, was not a native Theban, but a Thinite,—with Manetho, head of a Thinite dynasty; considering that the most celebrated act of his reign was the improvement of Lower Egypt, and building of Memphis; considering that Memphis, as M. Bunsen admits, was the favourite residence of his successors during this earlier period of national glory, and that their splendid Mausolea are accumulated on its territory; considering further, on the other hand, that Thebes was preferred to Memphis by the Pharaohs of the second glorious era, from the XVIIIth dynasty downwards, and adorned by them with its noblest monuments;—considering all this, we should certainly have expected, had either title been adopted in the sense of *Imperial*, to have found that of Memphite, rather than of Theban, preferred for the line of Menes. Besides, the latter title extends, in M. Bunsen's own system, to the fifty-three Kings of Apollodorus, vassals of the Shepherds; to whom it never could, as he fully admits, have been assigned in any such imperial sense. We would suggest, as a better interpretation of the epithet, that the Registers, from whence both the Alexandrian chronologers derived their materials for adjusting the anomalies of previous compilers, were (as is in fact stated by Syncellus, p. 147,) those of Thebes—or the Thebaid—during the Hyksos period, the only, and probably at all periods, from its superior antiquity and sanctity, the purest repository of the Royal Archives. The orderly line of succession which thus resulted, would very naturally, in compliment to the source from whence it derived, be characterised as Theban. We may add, that had Eratosthenes really found other Kings recognised in the

genuine annals, as legitimate sovereigns of a portion of the Empire, it is not easy to see upon what principle he could have denied them at least a subordinate rank in his list.

The fact, that both Thebes and Memphis were invariably in possession of the same line of Princes during the supposed prevalence of these double dynasties, is not only admitted by M. Bunsen, but urged as an argument in favour of his view. To us it appears a strong one on the opposite side. In a long, narrow country like Egypt, divided into two nearly equal regions—speaking different dialects, and each with distinct, and doubtless rival capitals, jealous of each other's privileges—there was nothing in itself so improbable, that in unsettled times a rival race of Princes might for a time have usurped one or other subdivision, to the detriment of the legitimate Lords of the whole. But the notion of the mighty Pharaoh, supreme in Memphis and Thebes, submitting to be bearded, almost within sight of his palace walls, by a petty chieftain of This or Elephantina, is not so credible. Mr Bunsen remarks, (II. p. 265,) as a reason for preferring the lesser to the greater Heracleopolis, for the royal residence of his IXth and Xth contemporaneous dynasties—'That none but such as held Manetho's history to be but a tissue of absurdity and contradictions, could ever think of a separate state in the latter township, situated as it was at the very gates of Memphis, during the existence of an imperial dynasty in that city.' His own hypothesis regarding the IId dynasty must then also fall to the ground; since This, its seat of government, was just about the same distance from Imperial Thebes itself, as Heracleopolis from Memphis, and situated between the two capitals, so as actually to cut the Theban-Egyptian Empire in twain. The improbability in regard to the IXth and Xth dynasties is no less startling. These two, each of 19 Kings, in all 38, are supposed to have reigned (as we have seen) in the Lesser Heracleopolis, contemporaneously with the VIIth and VIIIth of imperial sovereigns. But as these last comprise, in M. Bunsen's adjustment, but sixteen Kings in all; and as the whole years allotted to the 38 give to each but a very short average length of reign, in order to reconcile these various disproportions, the two Heracleopolitan lines are further assumed to have been contemporary, not only with their imperial cousins, but with *each other*. We should thus have three dynasties of legally recognised Pharaohs, two of them reigning conjointly—in pairs, it may be presumed—in one petty township, while the other held the remainder of Egypt with her two mighty capitals. Why, our own popular legend of the 'two Kings of Brentford' becomes authentic history in comparison with such a state of things! We could as

readily believe in a separate dynasty of Tudors or Plantagenets, during our own middle ages, setting up their Throne in the Town-Hall of that thriving community, as in nineteen successive pairs of kinglings, reigning during several centuries, and recognised as legitimate Pharaohs in the national annals—for that is really the important point—in an insignificant borough of the Delta, within a day's journey of imperial Memphis.

There are other, to us inexplicable, difficulties, in M. Bunsen's arrangement of these secondary dynasties. Admitting their existence, would Manetho not have assigned them also a secondary place in his lists, after his great imperial lines of parallel succession? But instead of this, the petty Thinite IId is made to take precedence of the Imperial IIId; while the Elephantinæan Vth is assigned a similiar priority to the Theban VIth. But this is not all. We find appended to the names of the first and second Kings (respectively) of the IId dynasty, the following historical notices:—'During this reign a great landslip took 'place at Bubastis, and many perished.' 'During this reign 'the worship of Apis was introduced at Memphis, that of Mnevis 'at Heliopolis,' &c. Both these comments relate to the affairs of Lower Egypt. What could induce Manetho, or Africanus, whichever it may have been, (see vol. i. p. 108,) to connect such notices, wherever they may have found them, with the names of petty chiefs residing three or four hundred miles up the Nile, rather than with those of the imperial monarchs to whom the localities belonged? What should we think of an epitomist of English history, who should not only give his bye chapter on Scotland or Wales a precedence of chronological rank, but should append to the names of certain Malcolms or Llewellyns such remarks as the following:—'In his reign Thomas à Becket was 'canonized.' 'In his reign the sea destroyed many villages on 'the coast of Lincolnshire;'—omitting all allusion to these events in his main line of narrative? The case is still worse with the note appended to the name of Achthoes, chief of the IXth, one of the two doubly contemporaneous dynasties of Heracleopolis. Of him it is said, that he was 'the worst King that had yet reigned, and 'cruelly oppressed the people throughout the *whole land of Egypt.*' (ἐν πάσῃ Αἰγύπτῳ.) We scarcely think the impartial reader will admit M. Bunsen's explanation of this text, as allusive merely to an incursion of the ferocious little despot into the upper country. He will be of our opinion, that it is clear from Manetho himself, that Manetho at least knew nothing of any contemporaneousness in either the IId or the IXth dynasties. We shall further endeavour to show, upon the same authority, that he was equally in the dark in regard to the Vth, and by inference the remainder of the set.

In his rubric to the Vth dynasty, it is described as consisting βασιλέων ἡ ἐξ Ἐλεφαντίνης; not of eight Elephantinæan Kings, 'but 'of eight Kings *from*—literally *out of*—Elephantina;' that is, Kings of an Elephantinæan family, reigning, not obviously at Elephantina, *whence* they are said to have come, but as imperial Pharaohs of Egypt, doubtless, like their forefathers, in Thebes and Memphis. There can be no question as to the reading, supported as it is by the garbled version of Eusebius. The reason why the expression is here varied from the form preferred in the parallel cases, 'Thinite kings,' 'Memphite kings,' &c., is also apparent. Elephantina was itself a term of uncertain usage, frequently occurring in the variety Elephantis. Its gentilic, consequently, as was often the case in Greek, even with *more* familiar foreign names, was little, if at all determined, and therefore to be avoided as inelegant. This Manetho does, by the above slight periphrasis. It is, however, quite clear, that the import of the phrase ἐξ Ἐλεφαντίνης, in the one case, and of Θινιτῶν, &c., in the others, is precisely the same. Neither in the one nor in the others, therefore, are we justified in assuming local dynasties, but junior branches of the royal caste, settled in these cities, and succeeding, or represented by Manetho as succeeding, on failure of the elder line, to the imperial throne; just as in the corresponding changes of dynasty in the later Empire.

But it may be asked, How do we account for the circumstance, that the names of Eratosthenes find their parallel only in the supposed imperial dynasties, while no such coincidence is traceable in the others? Although not altogether satisfied of the correctness of M. Bunsen's argument even upon this point,* we should have no objection to concede it, in so far as the present question is concerned; as it would in no way interfere with our last and most satisfactory objection to his contemporaneous theory; viz., that the difficulties it seeks to obviate may be provided for by as effectual and better authorized expedients. We must here revert to the numerous examples above ad-

* We cannot, for example, acquiesce in the transfer of the two last names of the IId dynasty to the commencement of the IIId, which names, omitted by the carelessness of copyists in the text of Africanus, are yet vouched for by the number of *nine* Kings specified in the rubric. The monumental name Schafra, identified by M. Bunsen with Pammes, 19th of Eratosthenes, also appears to us to find a better match in the Sephres of Manetho's Vth, than in the Thamphthes of his IVth dynasty. Nor do we hesitate to prefer identifying the 'Bull Tyrant' Chouther, of Eratosthenes, with the 'Tyrant' Achthoes, first of Manetho's IXth dynasty, rather than with the monumental King Mentuatep-Nebtura, pre-

duced, of personages represented in the genealogical records of this period, with attributes of royalty, and side by side with reigning sovereigns, but who never themselves occupied the throne. In the table of Karnak, M. Bunsen points out six—in that of Abydos, thirteen. Lesser examples are observable in other cases; and did the monuments of that epoch exist in their integrity, many more would doubtless appear. Those we possess afford at least evidence, that the ancestral pride of particular Kings led them often to substitute or interpolate, in their registers, certain favoured lines of royal forefathers, to the exclusion of the contemporary reigning princes;—and that in such numbers, and in such a manner, as to afford scope, according to M. Bunsen's own remark, 'for multiplying *ad infinitum* the Pharaohs of 'the ancient Empire.' Supposing further, what in the natural course of things must or may have been the case, that these collateral houses had been invested, perhaps hereditarily, by the reigning Emperors, with viceregal honours, as governors or satraps of the provinces where they had fixed their domicile—what more likely than that they should, by less critical compilers of the national annals in later times, and in arbitrary subdivisions of dynastic periods, such as those of Manetho unquestionably were, be allotted places in the list, as Thinite, Elephantinæan, or Heracleopolitan dynasties? How probably this may have happened, we shall show by evidence which M. Bunsen will hardly be prepared to gainsay. We are, as already said, indebted to himself for the fact of thirteen non-reigning Princes interpolated in the royal line of Abydos. They are identified chiefly by the absence of certain more imperial insignia of monarchy. Yet we find, in his own general table of royal names, these very personages, invested with the most unequivocal of all imperial emblems, the *Bee and plant*, (of which no trace exists in the Table,) actually occupying their places, at full length, as the Vth Manethonian dynasty. Now when we find the accomplished historical critic of the modern German school, brought

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ferred by M. Bunsen as one of the missing names of Manetho's VIIIth. This latter identity rests on an alteration in the text of Eratosthenes (Χενθης ταυρος τυραννος, into Μεντυατεμ Νεβταυρης τυραννος), which seems to us to transgress the legitimate bounds of conjectural correction. Besides, this is the same Mentuatep whom we have seen treated with such distinguished honours by the sovereigns of the XVIIIth dynasty in their monuments, ranking in their processions by the side of their chief Amos, or even of Menes himself. He must therefore have been a King of popular and illustrious memory. How, then, could he have been entered in the Theban Register as a tyrant?

up at the foot of its Gamaliel—himself, perhaps at this day, its greatest master—guilty of such a slip; are we not entitled to assume that the work of an Egyptian—synonymous with confused and blundering—chronicler, composed in the comparative infancy of the critical art, may have teemed with similar irregularities, especially with the Egyptian object in view of magnifying the antiquity of his native monarchy?

We have enlarged the more, and with greater freedom, on our objections to this part of M. Bunsen's system, from a conviction that, could we persuade him to abandon it, the substitute we propose would strengthen rather than invalidate his general theory of adjustment.

The ensuing era, from the XIIIth to the XVIIth dynasty inclusive, is the darkest in Egyptian history; marked, doubtless, at its commencement, by internal weakness and anarchy—at its close, by foreign conquest and national humiliation. The list of Eratosthenes fails us. Few names have been recorded by Manetho. The numbers are most intractable. The monuments, unprovided with a key to their own interpretation, afford in their turn but little assistance; while the discrepancy between our two best guides, Josephus and Africanus, is irreconcilable. We subjoin a synopsis of Manetho's account of the period, as transmitted by these two authors:—

Africanus.		
Dyn.		Yrs.
XIII.	60 Diospolite kings,	453
XIV.	76 Xoïte kings,	184
XV.	Six Shepherd kings, Phœnician invaders and conquerors.	
	1 Saites,	19
	2 Beon,	44
	3 Pachnan,	61
	4 Staan,	50
	5 Archles,	49
	6 Aphobis,	61—284
XVI.	32 Shepherd kings, [Euseb. 5.]	518
XVII.	43 Shepherd kings / 43 Diospolite kings	151
		1590

Josephus.		
Invasion, Conquest, and Empire of Phœnician Shepherds.*		
	Yrs.	m.
Salatis,	19	
Beon,	44	
Apachnas,	36	7
Apophis,	61	
Janias,	50	1
Assis,	49	2
	259	10

These kings, with their descendants, reigned in all 511 years. After which the Shepherds were expelled by the native princes.

* There can be little doubt that these Phœnician Shepherds are the personages who, when ejected from Egypt, figure in Greek tradition as Danaus, Cadmus, &c. They also appear in *Palestine* as *Philistines*;

We cannot say that M. Bunsen's efforts to enlighten this dark era, appear to us equally successful with his researches into the previous and subsequent periods. The fault, however, is not so much his own, as that of the materials he has to deal with. We question whether human ingenuity could extract, out of our existing stock, any thing possessing even a provisional claim on our critical conviction, to the character of an authentic record of events. Here, again, the contemporaneous theory comes into extensive operation. The XIIIth and XIVth dynasties of native princes are made parallel to the XVth, XVIth, and XVIIth of foreigners. The invasion of these last is assumed to have taken place under the last King of Eratosthenes, = to one of the earlier Kings of the XIIIth dynasty. The 53 nameless Kings of Apollodorus then succeed, as = to the 60 tributary Theban (Diospolite) princes of the same dynasty, the number of years of which, in Manetho's genuine text, is assumed to have been 953 instead of 453. The 511 years of Josephus are held to be another version of the 518 of Africanus for the XVIth dynasty; the remaining years of Shepherd rule to have been dishonestly suppressed or slurred over by the Jewish historian. For the XVIIth dynasty, the genuine number of Kings is assumed to be the five of Eusebius, erroneously ascribed by that author to the XVIth; and this head of entry in Africanus, with the exception of the 151 years, which are retained for the five Kings of Eusebius, is treated as a corruption of Manetho's summary or *epilogus* of the whole number of reigns, foreign and native, for the entire period. This number for the Shepherds is retained at 43; for the Thebans, is converted into the 53 of Apollodorus as above. The XIVth Xoïte dynasty is made *doubly* contemporaneous, viz. with the XIIIth Theban, and the three Shepherd dynasties;—somewhat as in the previous case of the IXth and Xth. The numbers of the Shepherd dynasties, thus remodelled, are adopted as the most authentic; and the whole period is made to comprehend 43 Shepherd Kings; 53 contem-

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both these names being derived from Pheles, (Pelusium,) their stronghold in Lower Egypt. Hence, in the figurative genealogy of Scripture, we find the Philistines, although an Aramaic race, described as descended from Mizraim, (Egypt.) Hence, the 'men of Gath,' who slew the sons of Ephraim, (1 Chron. vii. 21,) are described as 'born in that land;' the land, namely, of Goshen in Lower Egypt, formerly their own, then occupied by the Hebrew Shepherds. Some years ago we sketched out, but never matured, an article embracing these and other similarly curious points of enquiry. We may possibly have an opportunity of resuming the subject, with reference to the promised sequel of M. Bunsen's researches.

porary Theban, and 76 Xoïte Kings; and 260 + 518 + 151 = 929 years.* The thirty Kings of the right compartment of Karnak are understood to represent (in the same general way as the left compartment the previous dynasties) the succession of native sovereigns for this period; whether the Theban line alone, or the whole 129 of Thebes and Xoïs united, is left doubtful. The thirty of the Table are supposed to have been selected by King Thutmes as especial objects of veneration; for what reason, or upon what conceivable principle, it would baffle Œdipus himself to conjecture. The first fourteen, as we formerly remarked, are also swelled to some 50 in the papyrus, while the sequel of the two documents offers no correspondence whatever. In readily admitting the ability here displayed by M. Bunsen in his series of subtle combinations, yet, as the foundations on which they rest appear to us essentially insecure and problematical, we feel the less disposed to enter upon any closer analysis of the process by which they have been attained. For the further elucidation of this obscure period, we must look to a better supply of monuments, of a more specific and intelligible character, than those we at present possess.

From the XVIIIth dynasty downwards, M. Bunsen, on a retrospect of his previous course, may be likened, if not to a traveller in a beaten track, at least to an engineer engaged in constructing a road through a comparatively easy country, already in part surveyed to his hand. His readjustment of the XVIIIth and XIXth dynasties, reducing the former to but nine successive Kings, and discarding, here and in the sequel, the supernumeraries of Manetho, is a masterly piece of criticism; and the whole remainder of the series is treated with equally happy effect. This period comprehends about 1300 years; to which, adding 929 for the middle era, and 1076 for the Table of Eratosthenes, we have about 3300 for the whole Egyptian Empire,—from Menes down to the conquest by Darius Ochus, about 340 years B.C. This gives 3640 B.C. for the epoch of Menes. M. Bunsen, however, further assumes, what is indeed self-obvious, that the Egyptian people must have existed for a long period,—

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* This we presume to be the substance of the author's system, although there is certainly some ambiguity in the mode of its statement. We do not understand, for example, how, after having assumed the period of the 53 kings of Apollodorus to be equal to that of the 43 Shepherd kings, viz. 929 years, he should be at pains, in the sequel of the same page, (21, 36,) where it seems to be so settled, to account for the small average length of reigns that results for each Theban King, on dividing by their sum 53, not the 929 years of the whole period, but the 453 of the XIIIth dynasty alone.

say, at the least, five centuries, in their early less settled state,—before they reached the point of civilization at which Menes consolidated them into a great united Empire. This brings us back to upwards of 4000 years B.C. Such a result may possibly prove a staggering obstacle, with some of our readers, to the admission of M. Bunsen's claim to any authority whatever in such matters; from its incompatibility with what is familiarly called the 'Mosaic chronology.' If at one with our author upon all other points, we shall not be disposed to differ with him upon this. We admit his general rule, that upon no rational principle, historical or doctrinal, can the chronology of the Jews be considered as part of the inspired element of Scripture. In the case more immediately before us, we have qualified, as above, the term 'Mosaic chronology', from a belief that many of those who habitually use it as a watchword of orthodoxy, have no clear notion of its import. Are they aware that there are *three versions of this chronology*—the Hebrew, Samaritan, and Septuagint—all professing to represent the genuine Mosaic tradition; all advocated by authorities in high odour of orthodoxy; *yet differing from each other to the extent of some thousand years*? Are they aware, that between the Hebrew and the Septuagint, (the two most popular of the three,) the discrepancy, in the reckoning from Adam to Abraham, amounts to nearly 1400 years; in that from the Deluge to the latter patriarch, to nearly 800; and that proportional variations are observable in respect to later periods? For long, the Hebrew dates were held as infallible in the Protestant churches. Of late, however, the tide of orthodoxy has turned, and continues to set strongly in favour of the Septuagint,—the numbers of which were formerly condemned as forgeries of Alexandrian Jews. This stigma is now transferred to the Hebrew, and its Rabbinical compilers of the Byzantine age. Now we hold it to be a primary article of true Christian orthodoxy, that those portions of Scripture which embody the divinely inspired truths essential to human salvation, have been, and will be preserved, in their genuine integrity, by the same Providence which ordained and promulgated them. Those, on the other hand, who believe them to have been delivered to us in a corrupt form, are heretics of the rankest description;—as denying the purity of God's word—making God himself, as it were, a party to the delusion of his worshippers. This sin must, demonstrably, lie at the door of those who attach the authority of divine inspiration to systems of numbers, thus liable to be rejected, in their turn, by truly pious Christian professors, as cheats or forgeries. It is obvious that systems differing from each other, to the amount of a thousand years or two, cannot all be right; but it is a legitimate inference that they may all be wrong; and it were surely a service to the cause of religion,

as well as of history, could the common error be corrected by the aid of authentic monuments, whether derived from the banks of the Jordan, the Euphrates, or the Nile.

The strange part of the matter is, that, while the advocates of any one of these conflicting versions stigmatize its rivals as Rabbinical impostures, those who are the dupes, and in so far the accomplices of the fraud, escape the charge of heresy. But no sooner does an impartial enquirer, with a judgment free from all Rabbinical trammels, propose to adjust the dispute by an appeal to other testimony, than all parties combine against him, as a common enemy to this most paradoxical standard of orthodoxy! We find it difficult to perceive in what respect the man who is deluded from its paths by lying Jews, is better than one who errs on the faith of Egyptian monuments. We think it strange that an interpreter who transforms the days of Daniel into years, should be entitled to brand as a heretic one who supposes the nine hundred years of Seth or Canaan to denote primitive eras or stages of human development, rather than the life of a single natural man;—as M. Bunsen, we expect, will do, in his ensuing volume on the Scriptural connexion.

Such attempts to stifle free enquiry into the real nature of that connexion, we consider as among the most serious obstacles to the elucidation of Christian truth; and we feel grateful to M. Bunsen for his efforts to expose and resist them. The real danger here lies, much less frequently in the speculations denounced as dangerous, than in the illiberal spirit in which they are met. We need scarcely remark, that we have not here to deal with a scoffer, or insidious enemy to Revealed Religion, but with a most zealous and successful labourer in its cause. If his doctrines be true, proclamations of their danger will not disprove them. If they be false, they will yield to the force of reason and argument. But we can hardly imagine a more fatal blow to the real interests of Religion, than the establishment, by incontrovertible evidence, of facts, which are declared by the accredited keepers of the Christian conscience of the community, to be incompatible with the fundamental articles of their faith.

We will conclude by tendering M. Bunsen our best thanks, for the distinguished services he has rendered to this important and interesting branch of historical enquiry; and by expressing our sanguine wishes for the further successful prosecution of his labours. Should the objections we have urged to any portion of his system contribute to its improvement or correction, it will not be to us a source of greater satisfaction, than, should they, by provoking more stringent researches, tend more firmly to establish his own opinions, and convince us of the fallacy of ours.

ART. VI.—*Narrative of the United States' Exploring Expedition, during the Years* 1838–1842. By CHARLES WILKES, U.S.N. Five volumes 8vo. London: 1845.

THE work before us contains a history of the only expedition hitherto undertaken by the Government of the United States for the purposes of maritime discovery. Its principal objects, as stated in the official instructions received by its Commander, were, to explore the Southern and Pacific Oceans; to ascertain, with as much accuracy as possible, the situation of that part of the great Antarctic Continent which was supposed to extend to the southward of Australia; and to resolve various questions respecting the navigation of the Polynesian seas,—important to all vessels engaged in commerce beyond Cape Horn, and especially to those employed in the Southern whale-fishery. Upon these important services the Squadron was employed nearly four years; three of which were passed in the unknown and perilous seas which separate Southern Asia from Western America; and it completed the entire Circuit of the Globe before its return to the United States.

We cannot promise much amusement to our readers from the brief account of the 'Exploring Expedition,' which we are about to lay before them. There is little romantic adventure, and still less picturesque description, to be found among the technical and scientific details which chiefly fill Captain Wilkes' pages. But his work contains some geographical and nautical information, and some sketches of manners and customs, calculated to recommend it, notwithstanding its rather cumbrous and unattractive style, to those who take an interest in these branches of knowledge.

It was scarcely to be expected that a Government, the western frontier of whose territory borders upon the largest and richest wilderness in the world, should have much attention to bestow upon unknown rocks and islands at the Antipodes; and it was still less probable that a people, whose interest is each succeeding year becoming more completely diverted from maritime affairs, by the vast field of adventure which lies at its very door, should display any general anxiety for information about the coral reefs and sand-banks of the Pacific Archipelagos. Accordingly we find, that the present expedition had been so long and abortively planned, and so repeatedly deferred, as to be regarded, by all who had concerned themselves in its objects, with disgust and disappointment. It was in March 1838 that it was placed under the command of Captain Wilkes; and we presume that we are

justified in ascribing its after rapid and successful organization principally to his zeal and ability. The vessels placed under his orders were the Vincennes and Peacock sloops of war, the Porpoise brig, and the Seagull and Flying-fish tenders. It is a somewhat remarkable, though not, we believe, an unprecedented circumstance, that Captain Hudson, the officer in command of the Peacock, was superior in rank to his temporary chief; and that, with a readiness equally creditable to his own liberality and to the high professional and scientific reputation of Captain Wilkes, he consented to waive his seniority for the purposes of the expedition.

On the 18th of August 1838, the Squadron got under weigh from New York, and proceeded on their voyage. Their first destination was Madeira, and they afterwards recrossed the Atlantic, visited Rio Janeiro and Buenos Ayres, doubled Cape Horn, and touched at Valparaiso and Callao. We shall not follow Captain Wilkes through his prolix description of these well-known scenes; nor through his long, and in our opinion irrelevant, digressions respecting the political history of Brazil and Peru. Nor do we consider any of the events which occurred to the Squadron, during the eleven months occupied in this part of the voyage, as worthy of particular notice; except the disastrous loss of the Seagull,—supposed to have foundered in a gale off Terra del Fuego.

On the 13th of July 1839, the Vincennes, Peacock, Porpoise, and Flying-fish, sailed from Callao; and on the 10th of September, after touching at some of the small islands composing the Paumotu group, they arrived at Tahiti.

The dreams of Rousseau and Condorcet, which represent man as weakened and depraved by the artificial training of civilization, have been by no means so universally forgotten, at least in France, as some of our readers may imagine. Sentimentalists are still to be found, who delight in contrasting the moral and physical excellence of some imaginary barbarian, with the frivolous mind and enervated body of the modern European. Some Parisian Novelists of the day have eagerly embraced an opinion so well suited to their liveliness of fancy, to their love of glittering novelty, and to that incredible ignorance of foreign nations, by which they have so frequently merited the derisive astonishment of their contemporaries. One of the most popular of their number—noted alike for the inexhaustible fertility of his invention, his meretricious style, his vehement prejudices, and the grotesque extravagance of his imagination—has lately been pleased to adopt, as one of his favourite characters, a youthful Hindoo Rajah, the patriotic victim of English ambition; and

has displayed much fantastic eloquence in contrasting the untutored dignity and simple virtues of the royal exile, with the inanity and corruption of his polished hosts. It might, perhaps, be unreasonable to expect from a Parisian *homme de lettres* any knowledge of a fact familiar to all other educated Europeans, that the native Princes of Hindostan are a race far more artificial in their habits, and far more enslaved by formal etiquette, than ever were the most obsequious courtiers of Louis XIV. It might be unreasonable to complain of the reckless ignorance which has painted the effeminate debauchees of the East as Patriarchal Chiefs, presiding over a race of brave and simple Foresters; and substituting the noble pursuits of war and the chase, for the Asiatic recreations of chewing *bang*, and gloating on dancing-girls. But if, passing over the ludicrous absurdity of M. Sue's inventions, we look simply at the theory which he intends them to illustrate, we know no part of the world in which we could find so strong a proof of its fallacy as the Polynesian Isles. There, if any where, nature has been left to herself; and there, if any where, she could dispense with interference. A delicious climate—a soil so rich as scarcely to require cultivation—a race of men superior in natural intelligence, and in physical comeliness, to most uncivilized nations—every thing, in short, combines to render easy the enjoyment of a golden age, if human nature is indeed capable of such a condition. But no sober-minded man can examine any trustworthy account of the state of society in these Islands, without becoming convinced, that these favoured regions present scenes, in comparison with which the most loathsome cellar in St Giles's, or the most miserable hovel in Connaught, is a temple of virtue and happiness. It has been said, and we believe most truly, that no man, whatever his experience of vice and misery may have been, can form any idea of the brutal depravity of which human nature is capable, until he has witnessed the habitual life of lawless savages.

We leave out of the question all the restraints imposed by religion and morality—or by those vague notions of religion and morality which the most ignorant can scarcely fail to pick up in a Christian country—when we declare our belief, that the mere power of self-command, which every member of a civilized community is compelled by the most vulgar motive—the fear of punishment by the law—habitually, in some degree, to exert, is alone sufficient to raise him far above the highest limit of barbarian virtue. The most violent and vindictive European feels himself under the perpetual control of a superior authority, and is well aware that he can only give full indulgence to his pas-

sions at the imminent peril of his life. This may be insufficient to make him a good man—perhaps insufficient to deter him from the occasional commission of crimes—but at least it preserves us from the wretchedness of living in a society of beings possessing at once the resolution, the physical strength, and the deadly weapons of full-grown men, and the blind and reckless selfishness of mischievous children. To say that the savage will take life upon the most trifling provocation, is to say but little. He will do so in cold blood to save himself from a moment's inconvenience. If his child disturbs him by its cries, he dashes out its brains—if he becomes tired of supporting a sick or aged parent, he murders him or leaves him to starve. In saying this, we are using no exaggerated or figurative language. We are stating the ordinary customs of the Polynesian Islanders. Captain Wilkes has recorded it as a well-known fact, that few of these savages, except their Chiefs, ever live to an advanced age; because those who reach the decline of life are almost invariably put to death by their children or relations, in order to rid themselves of the burden of their maintenance.

With these vices—the ordinary characteristics of utter barbarism—the tribes of the Pacific appear to unite much of that cold and merciless apathy, which is, in general, the worst effect of a corrupt and effeminate semi-civilization. Of natural affection, beyond the mere animal instincts which they share with the beasts of the brute creation, they appear to be nearly destitute; and of that spirit of nationality which produces such powerful and ennobling effects among many savage races, they have not the slightest tincture. In the numerous cases of parricide and fratricide mentioned by Captain Wilkes, as having occurred among the Polynesian Chiefs, we are struck—not so much by the atrocity of the crimes themselves, the most of which may unhappily find parallels in every age and nation—as at the callous indifference with which the kinsmen of the parties seem to have regarded the catastrophe. We find more than one instance of a family of Island Princes, whose previous history might rival that of the house of Atreus or Pelops, living together in apparent insensibility to their mutual injuries; and we can scarcely avoid the conclusion, that the worst vices of more generous dispositions are virtues far beyond the reach of these insensible and ruthless barbarians. There would, we are convinced, be great injustice in attributing this absence of natural feeling to any thing but intrinsic levity and feebleness of character. Neither barbarism nor civilization, powerful agents as they are, can develope propensities which do not naturally

exist. We find, for instance, in our own countrymen, the germs of the most formidable vices indulged in by their Scandinavian ancestors—pride, intemperance, violence of temper, and delight in war; and we see that, when the restraints of social life are removed, these characteristics display themselves as strongly in an English soldier, as in a Norwegian *berserkar.* On the other hand, these very Scandinavians, ferocious as they were, were still not incapable of the virtues which have adorned the most enlightened of their descendants. The ties of kindred, of country, of brotherhood in arms, were observed by them with a fidelity never surpassed. We do not, we trust, undervalue the powers of religion, and we profess the highest admiration for the honest zeal of the many good men who are exerting themselves, and in some instances with eminent success, to extend its influence; but we cannot disguise our conviction, that the Polynesians, however improvable in many respects, are, and are too likely long to continue, a very imperfect variety of the human race.

We are glad to find that the account given by Captain Wilkes of the present condition of Tahiti, while confirming in some degree our unfavourable opinion of the intellectual capacities of the natives, is still a strong testimony to the effect produced by religious instruction, in removing the more revolting peculiarities of their character. He speaks of them as a peaceable, honest, and trustworthy, though far from a striking or interesting race; and ascribes their improvement to the imperfect civilization already introduced among them—a change which some sentimentalists have designated as the irreparable corruption and degradation of a harmless and innocent people. Still, Captain Wilkes, while admitting the striking improvement of the Tahitian character, appears to have been by no means struck by those amiable and graceful peculiarities in their manners and appearance, with which some English voyagers have endowed them. He speaks very lightly of the beauty of their females, and can see nothing in their national songs and dances to redeem the licentiousness which has compelled the Missionaries strictly to prohibit such amusements. And in particular, he is greatly, and we must acknowledge very naturally, scandalized by the eagerness with which the most powerful Tahitian Chiefs contended for the profit of washing linen, and supplying stores for the American ships!—a practice which certainly exhibits a striking contrast to the scrupulous dignity which the North American Indian is known to maintain in his intercourse with Europeans.

Upon the 29th of September the Vincennes sailed from

Tahiti; and upon the 7th of October made Rose Island, the most easterly of the Samoan or Navigator group. Until the 8th of November, Captain Wilkes and the officers of the squadron were engaged in making accurate surveys of this Archipelago; which consists of eight small islands, the principal bearing the names of Savaii, Upolu, and Tutuila. He appears to have found the natives superior to those of Tahiti, both in physical form, and in natural energy of character. They are considerably under the influence of their Missionaries; and, above all, their females are remarkable for modesty, parental affection, and fidelity to their husbands—virtues almost unknown throughout the rest of Polynesia.

Departing from Savaii, the American Squadron reached Port Jackson on the 29th of November. Three chapters are occupied by the remarks of Captain Wilkes upon the Australian colony; and by his account of several visits made to the interior by himself and his officers. We pass over a part of his narrative about matters comparatively familiar to most English readers; but we cannot omit to express our gratification at the cordial tone in which he acknowledges the hospitable attention paid him by the colonial authorities, and at the friendly feelings which prevailed between the colonists in general, and the officers and men of his squadron.

On the 26th of December, the Vincennes, accompanied by the Peacock, Porpoise, and Flying-fish, sailed from Port Jackson on her Antarctic cruise—a service for which, as Captain Wilkes more than hints, they had been very indifferently provided. This want of the special equipments necessary to the safety of the undertaking was in a great measure common to the whole Squadron; but the Peacock in particular was in other respects so defective as to be wholly unfit for any but a short and easy voyage; and it was not without the most serious misgivings that Captain Wilkes yielded to the zealous anxiety of Captain Hudson to accompany the squadron, instead of remaining at Sydney to refit. The proceedings of the expedition during the two succeeding months, form perhaps the most interesting portion of the narrative. Among all the perilous and exciting adventures of a seaman's life, there are none to be compared, either in formidable aspect, or in actual danger, with those experienced among the floating ice of the Polar regions. Neither the iron-bound coasts and devouring whirlpools of the temperate, nor the thunderstorms and tornadoes of the torrid zone, can equal the terrific situation of the mariner, who finds himself driving helplessly before a gale, among a sheal of drifting Icebergs. In no

situation, if we may believe the hardy voyagers who have returned from these fearful enterprises, is danger so acutely felt by the bravest; because in none is the utter inability of human skill to exert the slightest influence over the event, so overpoweringly manifest. And yet, even the desperate chances of such a struggle, must be a comparatively harmless prospect to the seaman who has beheld his vessel imbedded in a field of ice; while the short summer is rapidly passing away, and every day is diminishing his hope of escape from the horrors of a Polar winter.

Few voyagers have experienced more of these formidable encounters within a short period than Captain Wilkes. On New-Year's day 1840, the Flying-fish parted company from the Squadron. The insufficient size and accommodation of the Tender had excited the surprise of her visitors at Sydney; many of whom, with more concern for the safety of their American friends, than consideration for their feelings, had not hesitated to predict the fate of Sir Hugh Willoughby, for her crew. These disadvantages were now severely felt; and her Commander was at length compelled, by the failing health of his men, to abandon the intention of rejoining his consorts. The Flying-fish altered her course to the northward, on the 2nd of February, and reached New Zealand on the 9th of March. On the 10th of January, the Vincennes, Peacock, and Porpoise fell in with the first Iceberg, being then in the 62d degree of south latitude; and in a few days they were constantly surrounded with floating pieces of ice. On the 16th, land was clearly discovered from all the vessels, in the shape of a large, round-headed mountain; altogether different in shape and colour from the intervening Icebergs. They were now off the coast of the great southern continent, at a point nearly to the south-south-east of Van Diemen's Land. On the 20th, the Peacock and Porpoise were directed to part company from the Vincennes, and to explore to the eastward; and on the 24th the former vessel met with an accident, which rendered her immediate return to Sydney a measure of absolute necessity. After penetrating the tract of floating ice which forms a bulwark to every coast in these latitudes, and enduring several dangerous collisions, by which her rudder was entirely disabled; the ship was at length driven stern foremost against a large Iceberg, with a violence which threatened instant destruction. Fortunately she rebounded from the shock without sticking fast; but scarcely had she moved her own length, when a vast mass of ice and snow, which the blow had loosened, fell close to her stern with a crash; which, had it taken place one second

sooner, would have crushed her to atoms. A more tremendous instance of the risks attending this perilous species of navigation, was probably never witnessed by any voyager who survived to relate it; and such were the injuries inflicted upon the vessel, that it became a doubtful question, not whether she could continue her cruise, but whether she could hope to reach a port in safety. She immediately stood to the northward, upon getting clear of the floating ice; and on the 21st of February, being favoured by the weather, arrived in a very shattered state at Sydney. The Porpoise reached New Zealand on the 20th of March, having continued exploring the coast until the 14th of February.

We now return to the Vincennes. She entered the icy barrier a few days after her separation from her consorts, and commenced exploring the coast to the westward. On the 29th of January she encountered one of the most formidable dangers to which the Polar voyager is liable—a gale of wind among floating Icebergs. For several hours she continued to drive rapidly through a heavy sea, surrounded on all sides by these fearful companions—now dimly seen through the mist and sleet,—now heard crashing and plunging in the darkness; but always close to the vessel, and threatening to overwhelm her at every moment. When the night closed in, without any diminution of the tempest or dispersion of the ice, the situation of the Vincennes became so perilous as to be nearly desperate. All hands were on deck, and Captain Wilkes acknowledges, that he repeatedly gave up every hope of escaping destruction. They were often warned of their narrow escape from striking on an Iceberg, by the sudden calm which the invisible monster produced, as the ship passed under his lee; and they more than once, when apparently driving directly upon a field of ice, escaped through openings so narrow as to have been unperceived in the darkness. At length, early in the morning of the 30th, the vessel entered a small open tract of sea, where she lay to, in comparative safety, until the bad weather was over;—having certainly, to judge from the calm and unadorned narrative of Captain Wilkes, passed a night of as frightful danger, as we can remember in the annals of naval adventure. For nearly two months longer, the Vincennes continued her toilsome progress along the coast of the Antarctic Continent,—constantly surrounded by ice, and liable at every moment to a renewal of the awful scene from which she had been so wonderfully extricated. The weather was, however, upon the whole, favourable; but her crew suffered severely from cold and fatigue, and it was not without remonstrance from his

medical officers, that Captain Wilkes completed his cruise. The ship was constantly in sight of the land, but in no instance do any of her people appear to have succeeded in reaching it. Several views of its appearance are, however, inserted in Captain Wilkes' work, and more wild and desolate scenes can scarcely be imagined. It presents a long undulating range of snowy mountains, stretching inland to the horizon—mountains which, in all probability, no living creature has ever trodden since the climate of our globe assumed its present temperature. At length, on the 21st of February, after having explored the coast from east to west, through nearly 60 degrees of longitude, the Vincennes put her head to the northward. Her passage was favourable, and, on the 11th of March, she arrived safe at Sydney, with all her crew restored to health.

On the 19th, Captain Wilkes took his final departure from Australia; and, on the 30th, anchored in the Bay of Islands, at New Zealand, where he found the Porpoise and Flying-fish. The New Zealanders, though always remarkable for their warlike and sanguinary habits, have generally borne a character higher, in some respects, than the other Polynesian tribes. Most voyagers have given them credit for their prowess as resolute and fearless warriors; and for some share of the manly dignity and honourable pride which usually accompany personal bravery. But Captain Wilkes, while acknowledging the common opinion of their merits to be somewhat higher than his own, seems inclined to place them among the most degraded and uninteresting of the savages whom he has visited. He considers them as inferior in intelligence, and inhospitable in disposition; and seems particularly struck by their unprepossessing appearance, and by another defect uncommon among the amphibious islanders of that tepid ocean—their extreme personal slovenliness.

On the 6th of April the Squadron sailed from New Zealand, and, on the 24th, they reached Tonga, the largest of the Friendly Islands, where they were joined by the Peacock, from Sydney, on the 1st of May. The Tongese appear to have struck Captain Wilkes as superior to any of the other natives of the Pacific Islanders, and as greatly resembling the Samoans, though superior in many respects even to these. But his intercourse with the natives, cautious and well-disposed as he invariably found them, was rendered difficult, by the existence of a desperate civil war between the Christian and Heathen inhabitants of the island—a calamity which, we are sorry to find, Captain Wilkes attributes to the hasty and intolerant zeal of the former party. The American Commander exerted himself to the utmost of his power to reconcile the two factions; but his media-

tion appears to have been attended with very little success; as a bloody battle was fought immediately after his departure, in which the converted natives were entirely defeated, and most of their principal Chiefs slain. The squadron sailed from Tonga on the 4th of May, and the next day made the Feejee Islands.

The Feejee or Viti Archipelago lies to the north-east of Tonga; and consists of two large islands, named Vitilevu and Vanualevu, besides a great number of smaller ones. Their climate is delightful, and they abound in the most picturesque and beautiful scenery; but the inhabitants of this favoured spot are, without exception, the most savage and treacherous race in the Pacific. In personal appearance they are rather a fine race, of a deep-black complexion, with closely curled hair,—displaying *none* of the negro deformities of face and figure; but they effectually disfigure themselves by dressing their hair in a thick wiry *wig*, clipped into the most grotesque shapes; somewhat resembling in texture and appearance the fantastic masses of foliage, into which the gardeners of the last century took so much pains to torture certain trees and shrubs. They appear to possess more spirit and energy than most of their neighbours; but this does not prevent them from displaying all the indolent selfishness, the insensibility to shame, the irreclaimable and apparently instinctive mendacity, which characterise the worst Polynesian races. They are a most dangerous and sanguinary, as well as an unamiable nation,—perpetually engaged in civil war, which they carry on with the most vindictive ferocity; and dreaded for their inhospitable treachery by every mariner acquainted with the navigation of the Pacific. With respect to their habits of life, they are Cannibals of the most inveterate kind; licentious in their manners beyond even the neighbouring tribes; reckless of each others' lives to an almost inconceivable degree; and, in short, as Captain Wilkes indignantly calls them, 'wretches in the 'strongest sense of the term.' Such is the forbidding picture which the American Commander draws of this savage race, and we shall presently see that his worst opinion was confirmed by unhappy experience.

On the 8th of May the Vincennes and Peacock arrived off Ovolau, a small island upon the eastern coast of Vitilevu, which lies nearly in the centre of the group, and anchored in the harbour of a town named Levuka. On the 11th, they were joined by the Flying-fish; and on the 12th, these vessels were visited by Tanoa, King of the neighbouring district of Ambau, and the most powerful Chief in the Feejee Islands. On the 15th, the Peacock sailed from Levuka for Rewa, an anchorage upon the eastern coast of Vitilevu; to which place she was originally dispatched, merely for the ordi-

nary purposes of the expedition. But shortly after her departure, Captain Wilkes received information that a most atrocious and treacherous massacre had taken place in 1834, at Kantavu, an Island to the southward of Vitilevu; in which a mate and some seamen, belonging to an American merchantman, had been murdered by the natives; and that the assailants had been commanded, on that occasion, by a chief named Vendovi, brother to the King of Rewa, and now residing in that neighbourhood. Captain Wilkes thought it absolutely necessary for the protection of his defenceless countrymen, to convince these ferocious Islanders that every such outrage was sure, sooner or later, to meet with just retribution. It is easy to imagine how strongly a tribe of savages must be tempted to robbery and violence by the spectacle of a large ship, freighted with what are to them the most inestimable treasures, and defended by only twenty or thirty men—the majority of whom, unrestrained by the imperfect discipline of a merchant vessel, are generally wandering unarmed on shore. It is only by the dread of retaliation,—severe in proportion to the delay and uncertainty of its infliction, that the savage can be induced to let such a prize escape him. And we therefore think that Captain Wilkes carried his forbearance quite as far as was justifiable, in merely ordering Captain Hudson to seize and secure the person of Vendovi; and in declining to enter into general hostilities with the guilty district, unless the other Chiefs should, by endeavouring to protect their ringleader, openly declare themselves his accomplices. The Peacock, on her arrival at Rewa, was received with great hospitality by the King and two of his brothers, whose barbarous names and titles we spare our readers; but the guilty Vendovi did not make his appearance, though it subsequently appeared that the American officers had, on one occasion, been in his company on shore. It happened, however, that the day after the receipt of Captain Wilkes' special orders, had been fixed, for a formal visit to his ship, by all the native dignitaries. They were of course permitted to come on board as usual, but Vendovi was still absent. Captain Hudson now thought himself justified to take advantage of the situation of the Chiefs, to compel them to do justice with regard to his complaints; and he therefore communicated to them his orders, and informed them that it would be his duty to consider them as enemies, and consequently as prisoners, unless the actual perpetrator was surrendered. Those who are accustomed to place that confidence in the good faith and forbearance of their neighbours, which the habits of civilized life justify, can form little idea of the consternation with which a party of Pacific Islanders, accustomed to see blood shed

upon the most trifling provocation, received this announcement. The Chiefs expected nothing short of an immediate massacre; and it was with much difficulty that Captain Hudson persuaded them that no injury, or even disrespect, was intended to their persons, unless they chose to assume the character of enemies to his nation. At this explanation their relief was great, and they eagerly joined in admitting the justice of his demand. Vendovi, indeed, had long been dreaded and disliked, even by his ferocious countrymen, for his turbulent and sanguinary disposition. Some years before the massacre at Kantavu, he had murdered one of his own brothers in cold blood, for a bribe; and he was now upon very doubtful terms with the survivors. It was accordingly agreed that one of the three Chiefs detained on board, should go on shore and bring him off as a prisoner; which, contrary to all reasonable expectation, was effected without the slightest resistance, or even expostulation, on the part of the culprit. On the surrender of Vendovi, his countrymen were of course set at liberty, and he was confined on board; the particulars of his guilt being fully established by his own confession. He was transferred to the Vincennes, when the two vessels next joined company, and continued a prisoner during the remainder of the voyage, but fell sick and died about the time of the arrival of the squadron in the United States.

The Vincennes lay at Levuka for several weeks; during the whole of which time, Captain Wilkes continued upon the most amicable terms with the neighbouring Chiefs, some of whom had been expected to resent the capture of their ally Vendovi. In the meantime, the Tender was busily employed in surveying the intricate straits and reefs lying between Ovolavu and Vitilevu; as well as the islands forming the southern division of the Feejee group. She afterwards, commanded by Captain Wilkes in person, visited for the first time, the large island of Vanualevu, which lies to the north-east of Vitilevu; on whose coast she was joined by the Porpoise, which had parted company from her consorts the morning of their arrival at Levuka; and had since been occupied in exploring the range of small islands forming the eastern boundary of the Feejee group.

On the 28th of June, the Vincennes put to sea from Levuka, and, on the 2d of July, anchored in a bay named Savu-Savu, on the southern coast of Vanualevu; and, on the 5th, she removed to Sandalwood Bay, at the western extremity of the same Island, where she found the Peacock just arrived. The latter ship had left Rewa on the 23d of May, and had since been employed in surveying the western coasts of Vitilevu and Vanualevu. On the

16th, the Tender, accompanied by several of the boats belonging to the Vincennes and Peacock, and commanded by Captain Wilkes himself, left Sandalwood Bay on an exploring excursion; and the next day they fell in with the Porpoise, which had been engaged among the small Islands to the north-east, ever since she last parted company from the Tender. The detachment then proceeded to survey the Asaua islands,—a string of rocks forming the north-western boundary of the Feejee Archipelago. But just as this duty was completed, and as preparations were making for their return to the ships, Captain Wilkes received intelligence, that at Malolo, the southernmost island of the Asaua group, situate on the western coast of Vitilevu, a treacherous attack had been made by the natives upon one of his boats; and that the assailants had been repulsed with difficulty and loss, leaving two officers—the lieutenant in command of the party, and a young midshipman—dead on the spot.

There is, perhaps, no more perplexing point of international law, than the question—in what manner, and to what extent, a civilized voyager is entitled to inflict retaliation upon a tribe of barbarians for such outrages as this. He has none of the ordinary means of obtaining redress. There is no municipal law to fix the punishment incurred by the offenders; no magistrate whose business it is to see justice done; no government to be made responsible, if other means fail. It would be absurd to rely upon the reluctant protection of some savage Chief,—himself, perhaps, the instigator of the crime complained of; whose first measure would, undoubtedly, be the concealment of the real perpetrators—probably the boldest and most valuable warriors of his tribe—and the murder of a few useless or obnoxious slaves as a substitute. It would be equally absurd to employ a party of seamen, to explore the woods and fastnesses of an unknown island, constantly exposed to be cut off by treachery, in the hope of their being able to recognise, among thousands of tattooed and painted savages, a few individuals never seen but once before, and then in the confusion of a deadly scuffle. And yet, few Commanding-officers would have the firmness to use the only effectual means of punishment; and to inflict the horrors of war upon a community of suppliant and defenceless savages; all of whom possibly might be wholly innocent of the offence committed.

Fortunately for the ends of justice, no such difficulty arose in the present case. The inhabitants of Malolo—long renowned and dreaded among their neighbours, for their warlike and piratical propensities—had an overweening opinion of their own powers, and were entirely ignorant of the formidable weapons of civilized

warfare. It was soon found that their Chiefs, so far from entertaining any wish to exculpate themselves, or to offer redress, were busily employed in preparing to receive the American detachment with open defiance. This conduct clearly left Captain Wilkes no alternative; and the Brig, Tender, and boats, after burying their murdered companions, with all the honours of war, upon a small desert island between Malolo and Vitilevu, proceeded to inflict signal punishment upon the guilty tribe.

The Island of Malolo contained two towns or villages; one named Sualib, on the southern coast, and the other named Arro, on the northern. The Brig was anchored off the south-eastern end of the Island, and near the former place. Four of the boats, commanded by Captain Wilkes, and accompanied by the Tender, then proceeded to Arro; while the remainder, under Captain Ringold of the Porpoise, landed at Sualib. The former division took possession of the town, and entirely destroyed it, without the slightest opposition; the warriors having all intrenched themselves in a certain citadel or stockade at Sualib, which was considered as the perfection of Feejee military architecture; and had the reputation of being absolutely impregnable. In this strong-hold, the natives defended themselves for some time with considerable spirit; but at length, the huts being set on fire by rockets, and the garrison having sustained considerable loss by musketry, the assailants entered the place and found it deserted. Some of the natives, who attempted to escape in their canoes, were overtaken and captured by one of the boats; and the rest took refuge among the rocks and woods, in the interior of the Island, where their women and children had previously been concealed. Their total loss was believed to have amounted to fifty-seven men killed; that of the Americans being one man mortally, and a few others slightly wounded.

On the day after the engagement, the natives sent on board the Porpoise, to request peace and make offers of reconciliation. But Captain Wilkes was too much acquainted with Feejee customs and feelings, and too well aware of the excessive importance attached by all warlike savages to the particular tokens of success or defeat, which may constitute their point of honour, to receive their submission in so unceremonious a manner. It is well known that the American Indian considers it no triumph to exterminate a hostile tribe, unless he can carry off the scalps of his victims; and by a fantastic refinement of the same kind, the Feejee Islander never considers himself defeated, until he has been compelled to do homage to his enemy, in a certain recognised form. Upon this public acknowledgment of defeat, Captain

Wilkes very wisely and properly thought it necessary to insist, and it was accordingly performed upon the beach near Sualib, by all the surviving Chiefs and Warriors of the Island.

With what motives, or upon what arguments, the conduct of Captain Wilkes, throughout this lamentable affair, has been, as he himself informs us, accused as 'cruel, merciless, and 'tyrannical,' we are unable to conjecture. Assuming — as surely, in dealing with facts so notorious, we safely may — that his public account of the matter is correct, we are inclined to think, that further hesitation in commencing hostilities, would have been nothing short of unpardonable weakness, in any man recognising the lawfulness of self-defence; and that, hostilities being actually begun, any irresolution in continuing them, until the complete submission of the enemy, would have given the attempt the character of useless and therefore unjustifiable revenge, instead of necessary chastisement. We are to remember that the question is not whether a civilized Commander can afford to overlook, with contemptuous compassion, an insult to his national flag; or can bring himself, as a Christian, to pardon the cruel murder of his friends. The question is, whether some fifty or sixty hostile savages shall be put to death, in just and open warfare; or whether the crew of every vessel which approaches their shores shall be exposed to massacre, until some maritime nation is roused to the determination of making a terrible example, and the infatuated islanders are exterminated to a man. Could a Feejee Chief be brought to comprehend the power of the countries, to whose commerce in the Pacific the incorrigible piracies of his countrymen had for so many years been a constant grievance, he would readily acknowledge, that such conduct as that of Captain Wilkes was the truest humanity; not merely to those who may be exposed to future acts of violence, but to those who might be tempted to commit them.

After leaving Malolo, the boats returned directly to Sandal-wood Bay; and shortly after, the Vincennes and Peacock got under weigh, and anchored off Mali — a small island on the northern coast of Vannaleon — in readiness to sail on the 9th of August: they were joined at this station by the Porpoise and the Seagull, which had been dispatched from Malolo to revisit Kantavu, Levuka, and Ambau. And on the 11th, the surveys and other duties of the squadron being complete, they put to sea from Mali; and to the great delight of all on board, except the exiled Vendovi, lost sight of the inhospitable shores of the Feejee Archipelago for the last time.

On the 24th September, the Vincennes, having parted company from her consorts on the passage, reached the Sandwich

Islands, and anchored in the roads of Honolulu, the capital of the Island of Oahu. The Tender was already at anchor; the Peacock arrived on the 30th; and the Porpoise, which had been left behind to make some additional surveys in the Feejee group, on the 7th of October. The King of the Sandwich Islands, Kamehameha III., arrived at Honolulu on the 29th of September, for the express purpose of welcoming the American officers. He is a young man, and his appearance and manners made a very favourable impression on Captain Wilkes. His portrait, with its closely shaven face, short mustache, and well-fitted uniform, contrasts strangely with those of his kinsmen, the grim Chiefs of Ambau and Rewa; though we are far from certain that, in point of picturesque dignity, the advantage is on the side of the more civilized Polynesian. The Sandwich Islanders—or *Kanakas*, as they call themselves—are, like the Tahitians, reclaimed and softened by semi-civilization. Notwithstanding the stain left upon their character, by the treacherous murder of the illustrious voyager who first discovered their country, they are in general a harmless and well-disposed race; and appear to be more trustworthy, and to have more regard for truth and honesty, than the tribes of the southern Pacific. But they are dull, indolent, and timid; and it is clear from several incidents related by Captain Wilkes, as having occurred during the subsequent ascent of Mauna Loa, that they retain all the want of sympathy for each other, and all the thoughtless selfishness which forms so remarkable a feature in the inert and feeble character of the Polynesian mind.

On the 3d of December, the Vincennes sailed from Honolulu, and stood to the south-east; on the 8th she made the Island of Hawaii, the largest of the Sandwich Isles; and on the 9th she anchored in Hilo Bay. The principal object of her visit to Hawaii, was to survey a large volcanic mountain named Mauna Loa, whose summit is nearly 14,000 feet above the level of the sea. The party employed in this duty was commanded by Captain Wilkes himself, and consisted of several officers and scientific gentlemen, ten seamen, and about two hundred natives, who acted as guides and porters. They left the ship on the 14th, and encamped for the night beside a vast volcanic lake or crater, at a place named Kilauea, at the south-eastern base of Mauna Loa. The 17th was passed in surveying the crater of Kilauea; which is an oval pool or lake of fire, about 1500 feet by 1000 in diameter, lying in the centre of a rocky and precipitous valley nearly ten miles in circumference. Captain Wilkes, who himself descended to its edge, gives a most appalling description of the narrow escape experienced some

days afterwards by one of his party, who was surprised by a sudden rising of the lava, while collecting specimens within the surrounding descent. On the 18th the ascent of Mauna Loa was commenced; and on the evening of the 19th the exploring party encamped at the height of 6000 feet above the level of the sea. Here they were joined by fifty officers and men from the Vincennes, whose assistance it had been found necessary to procure, on account of the indolence, insubordination, and continual disputes of the Kanakas; so that the party now consisted of nearly three hundred men. The 20th, being Sunday, was passed in repose; but on the 21st the ascent was resumed, and they reached a large cave, which was subsequently very useful as a depot for stores; and a shelter for those who became disabled by the mountain sickness,—from this circumstance called the Recruiting Station. A lieutenant and a party of men were left at this place; and on the 22d the party reached another encampment, afterwards known as the Flag Station, where a party was also left. At length, on the 24th, they reached their last and highest station, a point called by the sailors Pendulum Peak; and situated on the eastern side of the crater, at the summit of the mountain. All hands were employed in constructing a camp upon this exposed point; which was at length imperfectly effected by building walls with the loose fragments of lava, so as to shelter the tents from the piercing and stormy winds continually blowing. In this dreary situation, several days were passed; and on the 12th of January 1841, Captain Wilkes ascended the highest summit of the mountain—a point almost exactly opposite to Pendulum Peak. From this elevation he measured the height of the neighbouring mountain of Mauna Kea, which he found to be 193 feet above him; thus settling, in favour of the latter, the question of supremacy throughout the Pacific Ocean. During their long stay upon the summit of Mauna Loa, the whole of the adventurous party were more or less affected by very distressing symptoms of indisposition; but no serious illness occurred, nor did any dangerous accident take place, except in the case of a single seaman; who was accidentally left behind, exhausted, during the ascent of a small detached party from the Recruiting to the Flag Station, and was not discovered until nearly frozen to death. On the 13th the party broke up from the encampment at Pendulum Peak; and on the 14th, they completed their descent, and reached the crater of Kilauea.

Several weeks were passed in various surveys and experiments at Kilauea and elsewhere in the Island; and on the 5th of March the Vincennes sailed from Hilo Bay. On the 6th she

anchored in Lahaina roads, off the island of Maui, which lies to the north-west of Hawaii, in a line between that Island and Oahu. On the 17th she left her anchorage, and on the 18th returned to Honolulu. On the 23d she was joined by the Porpoise, which had sailed on the 16th of November; and had since been employed in making a more accurate survey of the Paumotu group of islands. The Peacock and the Flying-fish had left Honolulu on the 2d of December, and were still absent. On the 5th of April the Vincennes and Peacock sailed from Honolulu for the North American coast. On the 28th they arrived off the Columbia river; but the weather was so unfavourable, and the surf upon the bar so dangerous, that they were compelled to defer entering it. They accordingly proceeded to the northward, and on the 1st of May entered the straits of San Juan de Fuca, and anchored in Port Discovery. On the succeeding days they continued to advance into Admiralty Inlet, and on the 11th reached its extremity, and moored off Fort Nisqually,—a stronghold erected to protect the property of the Hudson-Bay Company.

From this day until the 17th of June, their time was passed in various scientific experiments at Nisqually; and in expeditions to explore the neighbouring prairies and rivers,—particularly the Columbia and its tributaries. The Vincennes and Porpoise then removed from Nisqually to New Dungeness, an anchorage within the straits of San Juan de Fuca, for the purpose of surveying the winding creeks and inlets of the bay; and while lying at this place, Captain Wilkes received the disastrous news that the Peacock, whose non-arrival had for some time caused him great anxiety, had been wrecked at the mouth of the Columbia.

On the 3d of August the Vincennes and Porpoise put to sea from New Dungeness, and on the 6th arrived off the mouth of the Columbia. Here they were joined by the Flying-fish, on board which vessel was Captain Hudson, from whom Captain Wilkes now received the report of the late misfortune.

It appeared that after departing from Oahu, eight months previously, the Peacock and Flying-fish had continued for several weeks cruising to the southward, in search of various small islands and coral reefs which had been reported to exist; but most of which they were unsuccessful in discovering. On the 28th of January 1841 they discovered an Island, previously unknown, lying to the north of the Samoan group, which Captain Hudson named Bowdich Island; and on the 6th of February the Peacock arrived off the island of Upolu, and anchored in the harbour of Apia on its northern coast. On the 6th of March

they left the Samoan group, and stood to the north-west, and on the 14th they made the most southerly island of the Ellice group. They continued their course in the same direction for nearly two months, during which time they touched at most of the small islands comprising the Ellice and Kingsmill groups. They found great diversity of character among the natives; but the generality appear to have displayed the worst characteristics of the Polynesian race; and on one occasion their treacherous ferocity was the occasion of very serious mischief. This was at Taputeouea, or Drummond's Island; one of the largest of the Kingsmill group, and supposed to contain about ten thousand inhabitants. The natives, who appeared a remarkably warlike and ferocious race, had been repeatedly guilty of insulting behaviour to their visitors; and had more than once shown a very suspicious wish to decoy them into situations unfavourable to defence. At length one of the Peacock's seamen, who had gone on shore to visit a town named Utiwa, failed to reappear on board. Every enquiry was made without effect, until no doubt remained of his assassination by the natives. Captain Hudson then resolved to punish the outrage; and on the 9th of March sent on shore his boats, with orders to destroy Utiwa. They were opposed in landing by a flotilla of canoes, which they dispersed with a loss of twelve men killed; after which they burned the town, and returned on board without having been able to find any traces of their unfortunate shipmate. We have already shown the necessity of prompt and effectual retaliation in all cases of this sort; and we may add, that in the present case it the more indispensable; because the natives, in their entire ignorance of civilized war, might very easily have been induced to entertain a most dangerous opinion of their own superiority. On the 8th of May, being then nearly in the latitude of the Sandwich Islands, Captain Hudson resolved to proceed at once to his rendezvous in the Columbia. The Peacock, therefore, altered her course to the eastward; and on the 17th of July, after stopping for a few days at the Sandwich Islands, arrived off the mouth of that river. The bar at this place is well known to be extremely dangerous of passage; nor was there any pilot to be procured at the time of the Peacock's arrival; but Captain Hudson being considerably behind the time fixed for his presence, and having with him certain written instructions upon which he considered himself justified in relying, resolved to make the attempt. On the 18th, accordingly, the Peacock stood for the shore; but, though every possible precaution was taken as she approached it, she struck in a very short time upon a shoal, and remained immovably grounded. It was soon found

that her situation was hopeless; on the 19th her crew reached the land without loss, though not without considerable difficulty and danger; and on the morning of the 20th, it was found that the ship had gone to pieces in the night. We must not omit to add, that Captain Wilkes expresses himself perfectly convinced of the propriety of Captain Hudson's determination to attempt the passage of the bar; and speaks in the highest terms of his conduct during the shipwreck.

The loss of the Peacock made it necessary to alter, in some degree, the general plan of the expedition. The Vincennes, under Captain Ringold, was immediately dispatched to San Francisco; while Captain Wilkes, with the Porpoise and Tender, passed the bar, and anchored off the town of Astoria. His first care was to provide a vessel for the accommodation of the Peacock's crew, as well as to assist in the future operations of the squadron; and this he fortunately found means to effect. An American merchant Brig, then lying in the river, was purchased on behalf of the government, named the 'Oregon,' and placed under the command of Captain Hudson. While the necessary alterations in the equipment of their new consort were going on, the Porpoise and Flying-fish proceeded to explore the navigable part of the Columbia. They left Astoria on the 18th of August, and ascended the river as far as Fort Vancouver; where they were very hospitably received by the officers of the Hudson's Bay Company. They remained at this place from the 28th of August to the 14th of September; during which time parties were constantly employed in surveying the surrounding country; and on the latter day they set out on their return to Astoria, where they anchored on the 1st of October.

On the 5th of October, the weather being favourable, the Porpoise and Oregon passed the bar; and on the 10th they were joined by Captain Wilkes with the Tender. The three vessels then stood to the southward; and arrived in San Francisco Bay on the 19th, where they found the Vincennes at anchor. Captain Ringold, who had arrived in the bay on the 14th of August, had already made considerable progress in exploring the Sacramento river; and in a few days every thing was in readiness for the final departure of the Squadron from the north-west coast. On the 22d of October, the Vincennes, Porpoise, Oregon, and Flying-fish left the harbour, and on the 17th they arrived at Honolulu. On the 27th of November the squadron again put to sea, and took their last leave of the Sandwich Islands. The Vincennes and Flying-fish then parted company from their consorts; and standing to the westward, entered the Sea of China, and anchored in the roads of Manilla on the 13th of January 1842.

On the 21st they left Manilla; the Vincennes, parting company from the Tender, crossed the Sooloo Sea to the southward, and on the 3d of February anchored off the town of Soung, which is the capital of Sooloo, a small island lying to the north-east of Borneo.

The late Captain Basil Hall has, with his usual vivacity, described the forcible impression which the different habits of different nations make upon the seaman; who, instead of passing from one to the other by the gradual progress of a land traveller, has nothing but the difference of climate to prepare his imagination for the change from the bustle of an English port to the blooming solitude of a Tropical Island, or to the silent desolation of a Polar coast. There could scarcely be a stronger contrast between two inhabited regions, than between the scenes at present visited by the Vincennes, and the savage cannibals of the Feejee Isles, or the sordid fishermen of the north-east coast. Manilla is a true Spanish colony; and the colonists have introduced among the natives all the picturesque and voluptuous indolence of their national manners. It is difficult to imagine ourselves in the Pacific Ocean when we read of the *Prado* with its groups of smoking or gambling loungers; of the *Tertulia* with its guitars, dances, and lemonade; or of the courteous officials, with their sonorous names and formal politeness. The natives of Sooloo, on the other hand, are in all respects Asiatics; and, with their slender forms and effeminate features, bear far greater resemblance to the Hindoo than to the Malay or Polynesian race. It is curious to recognise, in the deportment of the petty despot of this obscure island, the same puerile eagerness to display dignity and compel servility, which has so often excited the surprise of European Embassies at the splendid courts of Delhi or Ispahan. In other respects, these islanders seem to bear a very indifferent character; being, according to the description of Captain Wilkes, perfidious and cowardly in disposition, and, like most of the natives of the East Indian Archipelagos, inveterate pirates.

On the 12th of February the Vincennes left Sooloo, passed to the westward of Borneo, and anchored on the 19th in the road of Singapore; where she found the Porpoise, Oregon, and Flying-fish. The place is a perfect Emporium of Eastern commerce; but its prevailing character appears to be Chinese; and the temples, joss-houses, and junks of the natives, are adorned with all the ingenious deformities which characterise the labours of that singular people. At this place the Flying-fish was reported unseaworthy, and was consequently, to the great regret

of the whole Squadron, disposed of by public sale. Captain Wilkes expresses the natural regret of a seaman, in parting with a faithful companion of a long and dangerous expedition; but the recollection of the melancholy fate which, three years before, had befallen the Seagull, a vessel of the same class and size, deterred him from making the attempt to carry her to the United States.

We may now pass briefly over the uneventful conclusion of these voyages. On the 26th of February the Vincennes, Porpoise, and Oregon sailed from Singapore; and on the 10th of June, after touching at the Cape of Good Hope and St. Helena, the former vessel arrived in safety at New York.

Such is the outline—in itself, no doubt, sufficiently dry and uninteresting—of one of the longest and most laborious cruises ever undertaken. To the unimaginative reader, our barren list of dates and localities will be little more than a detached table of contents; only worth setting down for the practical purpose of saving him some trouble in exploring a voluminous work. But to those who, themselves engaged in the tranquil occupations of civilized life, can appreciate the courage required to endure a lasting separation from its enjoyments, we rather think that our sketch will appear a record of some interest. There is surely something striking, even in the common-place simplicity with which such voyagers as Captain Wilkes generally relate their adventures;—apparently unconscious that, in passing years among dangerous seas and Cannibal Islanders, they have been employed in any manner different from the ordinary routine of their profession. The patient zeal necessary for such an enterprise, is very different from the hardihood which we have seen prompting some spirited young men to serve a campaign with Don Carlos, or to pass a hunting season with the Paunee Indians. It differs from the mere love of excitement and adventure, as the courage of a martyr differs from the courage of a soldier; and it is not too much to say, that many a naval Commander has obtained the honours of a hero, by a display of firmness and talents far inferior to that which can only gain for Captain Wilkes the sober reputation of a judicious and scientific voyager.

ART. VII.—1. *La Pairie dans ses Rapports avec la Situation Politique, son Principe, ses Ressources, son Avenir.* Par M. CHARLES DUVEYRIER. 8vo. Paris: 1842.
2. *Lettres Politiques.* Par M. CHARLES DUVEYRIER. 8vo. Paris: 1843.

THERE are several causes which make the Political Writings produced at the present time in France, an instructive study to intelligent observers in all countries of Europe.

In the first place, there is much truth in the boast of French writers, that France marches in the van of the European movement. The fact is not necessarily of the highly complimentary character with which those writers generally choose to invest it. Movement is not always progress; and progress itself may be in a downward, as well as in an upward direction. To be foremost in the road which all are travelling, is not of necessity the most honourable position; but it is a position pre-eminently interesting to those who follow. And such, in the present period of the world's history, is the situation of France. The two strongest tendencies of the world in these times are towards Democracy and Revolution; meaning by Democracy—social equality, under whatever form of government; and by Revolution—a general demolition of old institutions and opinions, without reference to its being effected peaceably or violently. In this twofold career, France is the furthest advanced of the European nations. The feelings of her people are nearly as democratic as in the United States; the passion for equality almost as strong. Her institutions indeed infringe upon that equality, by limiting to a narrow class the privilege of electing, or being elected to the Chamber of Deputies. But even these privileges are not hereditary, and carry with them no direct accession of personal rank. In the eye of the law, and in that of private society, there is less difference between man and man than in any other country in Europe. The other European nations are steadily following in the direction of that social equality which, as far as regards the male sex, France has in a great measure realized. That England is undergoing this change as rapidly as the rest, has long been clear to every Englishman who knows any thing more of the world he lives in than the forms of it. Those forms, indeed, subsist with less alteration than in some other countries; but where are the feelings which gave meaning to them? Not the intelligent mechanic only, but the stupidest clown, at heart thinks himself as good as a nobleman; or rather (what is not exactly equivalent) thinks that a nobleman is no better than he; and there are a good many things which

indicate, that the nobleman himself secretly thinks much the same.

Not less is France ahead of the rest of Europe, in what may properly, and independently of the specific consequences flowing from it, be called Revolution. Other nations are gradually taking down their old institutions: France, by the sacrifice of a generation, made a clean sweep of hers; and left herself a fair stage, clear of rubbish, for beginning to build anew. France has had her Revolution; has cleansed her Augean stable. She has completed the business of mere destruction; and has come into direct contact with the positive, practical question of the Art of Politics—what is to be done for the governed? Other nations, and England more than any, are in the middle of *their* Revolution. The most energetic minds are still occupied in thinking, less of benefits to be attained, than of nuisances to be abated; and every question of things to be done, is entangled with questions of things which have first to be undone; or of things which must *not* be undone, lest worse should follow.

It would be absurd to deny, that a nation whose institutions have no historical basis, and are not surrounded by that reverential attachment which mankind so much more easily accord to what is made for them, than to what they themselves have made, lies under some serious practical disadvantages; on which this is not the occasion to expatiate, no more than on the advantages by which they are more or less completely compensated. But whatever may be the inconvenience, in point of practical working, of what has been called a 'geometrical polity,' in political discussion its effects are wholly beneficial. It makes disputation turn on the real merits of the matter in dispute. Under it, measures are attacked and defended much less on the ground of precedent and practice, or of analogy to the institutions, and conformity to the traditions of the particular nation; and much more on adaptation to the exigencies of human nature and life, either generally, or at the particular time and place. The discussion, therefore, has an interest reaching beyond those who are immediately affected by its result; and French writers say, hitherto not unjustly, that while the voice of the English Journals and Legislative Assemblies has little echo beyond the bounds of the British Empire, the controversies of *their* Tribune, and of their Periodical Press, are watched for and studied all over Europe.

The writings, then, in which intelligent and instructed Frenchmen promulgate their opinions, on the principal topics of public discussion in France, have a twofold interest to foreigners; because the questions discussed are such as either already are,

or will soon become, to them also, of great practical moment; and because the principles and premises appealed to are not peculiarly French, but universal.

In both these points of view, the *Lettres Politiques*, named at the head of this article, have a claim to attention. Originally published as a series of Weekly Pamphlets, and since reprinted in two octavo volumes, they form a collection of Dissertations on the topics, present or probable future, of French Politics, to which recent English discussion has produced nothing in its kind comparable. Not, certainly, that among our public writers there are not several with abilities fully equal to M. Duveyrier, but because their abilities are otherwise employed; because they have not yet turned to consider systematically how the institutions of the country may be worked for the benefit of the country; because in England there is still too much to be undone, for the question, 'what is to be 'done,' to assume its due importance: and the ablest thinkers, when they descend from the height of purely abstract science, find sufficient scope for their practical energies, in the war still raging around the shattered bulwarks of the great practical abuses; and small chance of followers, or even of spectators, for any other enterprise.

Among many things in these volumes, significant of the character which French political discussion of the higher order has of late assumed, two are specially remarkable to an English reader. One is, the total absence, through the twenty-five Letters, of discussion on any constitutional subject. There are no disquisitions in favour of, or even in deprecation of, organic changes. All such questions are assumed to be settled, and treated as not requiring notice. The other is, that with the most passive acquiescence in the structure of the government, as circumstances have made it, is combined the strongest and most active spirit of political reform. This is a conjunction which of late has occasionally been heard of in England, but we cannot say we ever saw it realized. We are promised indeed a 'new generation' of Church-and-King philanthropists, by whom every institution grounded upon contempt of the people, is to be worked for every purpose of kindness to them. But we see no very brilliant embodiment of this vision in half a dozen dreaming young men, whose ideal is Laud. For England the day of Conservative reformers is yet to come.

We know not whether M. Duveyrier is expressing his sincere opinion, or adapting his tone to the audience whom he desires to influence; but he professes himself satisfied with the existing constitution of France. He designates all discussions of its

defects as old quarrels, 'which divert the public mind from the 'real business of the country, and statesmen from the transac- 'tion of that business.'* Short-sighted as this view of things would be, if applied to such questions considered generally, there must be something in it which adapts itself well to the existing state of feeling in France.† It is certain that this avowed contentment with 'things as they are,' in respect to the distribution of power, is connected with no optimism as to the mode in which power is employed. The question, who shall govern? may be for the present in abeyance; but there is the liveliest interest in the question, how?—not by what hands, but for what purposes, and according to what maxims and rules, the powers of government shall be wielded.

In England also, it has been easy to perceive, for some years past, especially since the advent of the Peel Ministry, that a similar change of feeling and tone is in progress, both in the public and in the more thinking minds; though it has not reached by any means so advanced a stage. The interest in constitutional questions has much abated,—in part, from the hopelessness, for the present, of any further organic changes; and, partly, from a growing scepticism, even among ardent supporters of popular institutions, as to their being, after all, the *panacea* which they were supposed to be for the evils that beset our social system. Sincere Democrats are beginning to doubt whether the *desideratum* is so much an increased influence of popular opinion, as a more enlightened use of the power which it already possesses. But in this new tendency of opinion, France is as much ahead of England as she was in the previous democratic movement. We do not hesitate to express our conviction, that in France at least this change has taken place prematurely. Not that opinion could be too soon, or too earnestly, directed to the ends of government; but it may be, and we think has been, too soon averted from the means. The theory of Representative Government and Constitutional rights, which guided the public mind during the fifteen years' struggle

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* *Pairie*, p. 2.

† 'Study the masses and you will see that there is something passing in their minds, not unlike the disposition which preceded Louis Fourteenth's majority after the *Fronde*, and the establishment of the Consulate at the end of the last century. The same lassitude, the same disgust with bustle and agitation, the same abatement of the spirit of distrust, the same indifference to the political rights which that spirit had created.'—*Pairie*, pp. 36–7.

against the Bourbons, has been discarded before it had finished its work. France is still a country where twenty persons cannot form an association, or hold a meeting, without permission from the Police; where the personal freedom of the citizen is hardly better secured than in the most despotic monarchies of the Continent; where no agent of government can be legally prosecuted for the most enormous offence, without permission from the government by whose directions that offence may have been committed; and where the election of the representative branch of the Legislature, for a population of thirty-four millions, resides in about two hundred thousand persons,—distributed mostly in bodies of from one to three hundred each; enabling the separate interests of particular localities and of influential electors to decide the fortunes of Cabinets and the course of Legislation. In these things, however, France has for the present acquiesced. In what manner her government should be constituted, and in what manner checked, are not the questions which just now interest her. But it is not because she is blind to the disgraceful manner in which her constitution works, and which throughout these volumes is incessantly adverted to, as the most undeniable and the most familiar of daily phenomena.

Constitutional Government—Government in which the support of a majority in a representative assembly is necessary to office—has only had a real existence in France since 1830; and in this short period it has rivalled the worst corruptions of the English rotten boroughs. Bribery, indeed, in its coarser forms is comparatively unknown; because the electors are in a rank of life which commands hypocrisy. But a majority of the electors in a majority of the electoral colleges, is not too numerous a body to be bought; and bought it is, by distributing all public employments among the electors and their *protégés;* and by succumbing to the pretensions of every locally influential class interest; or, rather, the nominal government is but their instrument—they are not so much bought, as they are themselves the governing body, and claim to themselves in this shape the profits of power. Their position is not that of the voters in our small boroughs; it more resembles that of the borough holders. The gratification of their cupidity is the condition they are able to impose on any set of men whom they permit to be a Ministry.

'When a place, great or small, becomes vacant, what happens? Of the four hundred and fifty deputies who are *au courant* of every thing, because they have the right to penetrate each day and every hour into the *bureaux* of the ministry, there are twenty or thirty who begin the siege.

Their tactics are simple: They say to the Minister, "You will appoint such and such a relation or an elector of mine, or I withdraw my support." What can the Minister do? He temporizes; opposes one set of pretensions and demands to another; gives hopes to all, and puts off his decision until some new vacancy occurs, to give the hope of an equivalent to the unsuccessful applicants. Happy the Departments, like that of the navy, of *l'enregistrement et les domaines*, of the army, where the modes of admission and of promotion have been fixed beforehand by general rules! And even there, what latitude is allowed to favour; and in the Execution, too often, what contempt of justice! Favour is the moral ulcer, the chronic malady of the government. The delegates of the *bourgeoisie* finding the privileged class swept away, instead of abolishing privileges, seized on them for themselves; and the electors, instead of being indignant and finding fault with their deputies for usurping the privilege of the greater offices, found it simpler and more advantageous to possess themselves of the smaller.'—(*Lettres Politiques*, i. 168.)

What else could be expected? There are but 200,000 electors, and 130,000 places * (without reckoning the army) in the gift of the government. Again:

'The grand distributor of favours now-a-days, is the electoral body; which takes up the attention of its representatives solely with interests of locality and relationship, and circumscribes their hopes of re-election in an infinity of circles so different one from another, so changing, so personal, that there is no Minister who can take in hand a great enterprise of public utility with assurance of success; witness M. Molé with the question of railways; M. Guizot with the customs union; M. Cunin-Gridaine with the sugar laws,' &c. &c.

With the keen sense which the author every where shows of this great evil, by which the sacrifices that France has made to obtain good government, are to so great a degree stultified and rendered abortive, it may appear strange that he should not contend for a change in the constitution of the legislature. Such, however, is not his expedient. We know not whether it is conviction or policy which prevents him from being a Parliamentary Reformer; whether an enlargement of the basis of the representative system appears to him, in the present condition of France, not desirable, or merely not attainable. For whatever reason, he affirms that agitation for this purpose does no good, and only interferes mischievously with what he upholds as the true corrective of the present vicious mode of government;—the formation of an enlightened public opinion. He maintains that petty and selfish interests predominate in the government only because there are

* *Lettres Politiques*, i. 431.

no recognised principles on which it can be conducted in any other manner: That the public mind is uninformed, and has no fixed opinion on any subject connected with government, except the constitution of it: That without clear and definite views, diffused and rooted among the public, on the chief practical questions of government, there is nothing to restrain petty intrigues and cabals, or to support an honest Minister in resistance to the unjustifiable pretensions of classes and coteries. That the men at the head of the government would be glad to have such a support; that they are better than the system they administer, and that it is not willingly that they succumb to it—he assumes as a thing of course. We cannot doubt that he has reason to do so. It is not credible, that men who are among the most instructed and enlightened in France, who have enlarged the domain of thought, as well as contributed largely to the diffusion of its results; that philosophers like Guizot, Villemain, Duchatel, would not gladly wash their hands of *turpitudes* as lowering to the personal dignity, as discreditable to the integrity of those involved in them. They are men with convictions, and who wish their convictions to prevail; and it cannot be agreeable to them to be dependent, not on the steady adherence of a powerful party pledged to their opinions, but on their success in bargaining for the local influence of *notabilités de clocher*,—the oracles of this and that distant and backward *arrondissement*. From this position M. Duveyrier seeks to relieve them. It is ideas, he says, that are wanted;—principles of government capable of inspiring attachment, and stirring the imagination; principles sufficiently practical, and at the same time sufficiently commanding and generous, to rally a large mass of opinion around them. 'Vous n'avez,' he says to M. Guizot—

'Vous n'avez devant vous aucun de ces événemens irrémédiables, aucune de ces positions fatales, qu'il ne soit pas dans la volonté de l'homme de transformer . . . Redoutez les petites choses, les petits moyens, ennoblissez les débats, posez des principes dont la France soit fière, et toutes ces questions dont on vous menace, loin d'augmenter vos embarras, viendront à votre aide, et vous offriront, pour la consolidation du cabinet, un appui inespéré.

'Mais je prévois votre réponse; ce que vous me demandez, c'est une politique grande, généreuse, Française! Eh! que deviendrait-elle, mon Dieu! au milieu des intérêts ardens des localités, de l'égoïsme individuel, des intrigues, des cabales de l'amour propre?

'Je le reconnais; ces exigences secondaires sont aujourd'hui toutes puissantes; elles frappent les regards! Ce sont les étoiles qui brillent au ciel la nuit, quand elles y règnent seules. Mais n'oubliez pas que leur éclat pâlit aux approches du jour, et qu'à la place où elles sont encore l'œil les cherche vainement, quand le soleil a jété dans l'espace sa chaleur et sa clarté.'—(*Lettres Politiques*, i. 66–67.)

This doctrine, that the moral evils of the present political system of France arise from an intellectual cause—from the absence of convictions in the public mind—is dwelt upon by the author with a persistency and iteration for which the periodical form of the *Letters* afforded great advantages. In a letter to M. Chambolle, an opposition deputy, and editor of a leading opposition Journal, he combats the idea, that any peculiar baseness is imputable to the electoral class. The press and the public, he says, are not at all more immaculate. The very men who job their electoral influence for places for their sons, are men of honour in their private concerns.

'Politics, say they, have changed their aspect; men's minds are calmed; affairs are no longer in the critical state in which grand principles, strong passions, great public interests, come into play—of what consequence is it that the candidate is a trifle more or a trifle less with the opposition? it makes but the difference of a few words more or less on one or the other side. Frankly, when one finds the statesmen most opposed to each other declaring that they would govern in very much the same manner, has not the elector a right to treat questions of persons with indifference, and to transfer to his own private interest the degree of solicitude which he would otherwise have granted to those questions?

'But this is terrible! the constitution is perverted in its first principles; the very meaning of a representative government is one in which the sincere opinions of the country are, above all, represented.—Most true. But what if the country has no opinions? That is an incident which the constitution has not provided for . . . . Do not wonder, then, if numbers of people are led away by this *vile* calculation.—Here is one candidate who is for the good of the country, and another who is for the good of the country and for mine also; I should be a fool to hesitate.'—(*Lettres Politiques*, ii. 171–2.)

Accordingly, so far as a determinate public opinion does exist, questions are decided, and the government conducted not by this shameful appeal to personal and local interests, but on grounds which, right or wrong, are at least of a public character.

'There have existed, since 1830, two different kinds of politics.

'The one, which may be termed constitutional politics,' (la politique constituante,) 'was directed to founding the constitution, developing it, and defending it against the attacks of parties and the repugnances of Europe.

'The other, which may be called the politics of business,' (la politique des affaires,) 'aimed at protecting and encouraging the interests and labours of society, in the arts, the sciences, religion, military and diplomatic organization, internal administration, commerce, agriculture, and manufactures.'

In the former branch, in constitutional or organic politics, the government has proceeded on fixed and determinate principles;

and has accordingly been able to carry the Chambers with it, by large and certain majorities.

'Unhappily it is not so with the politics of business. Statesmen have not yet any programme for *that* department, any system of government specially applicable to it. Accordingly, as soon as the existence of the monarchy is no longer threatened, the fundamental principles of the constitution no longer in question, what do we behold? The government becomes feeble, uncertain, embarrassed; its majority breaks up into an infinity of minute fractions . . . . . Time has resolved most of the questions of constitutional politics which were stirred up internally and externally by the establishment of the new government; and the politics of business have now, in France and in Europe, assumed the ascendant. But there is not yet in France any system of government in matters of business. The opposition, in this respect, is not more advanced than the majority. . . . . Were the cabinet overthrown, its successors would encounter the same attacks and the same embarrassments, and would have even less strength to overcome them; for they would not (like the present ministry) come into office to repair faults, and save the country from a dangerous *entraînement*; no important situation would connect itself with *their* ministerial existence.

'Once suppose any general principles of government in the business department, and the situation is changed. If the principles are accepted by the most eminent minds of all sections of the majority, one of two things must happen; either the ministry will adopt them, and will, in that case, owe its safety to them; or it will disdain them, and the system will become an instrument of opposition, from which will issue sooner or later a durable cabinet.

'Such, at bottom, is the true political situation of the country; its difficulties, and its exigencies. The greatest service which could now be rendered to the nation, would be to introduce into the midst of its affairs, so languid, thorny, and complex, a general system of government, capable of overmastering the intrigues and petty passions of the coteries which have succeeded the factions of former days; and of introducing into discussions a new public interest, sufficiently considerable to impose on rival industries and rival localities, union and agreement.

'Twelve years of parliamentary omnipotence have proved this task to be above the strength of the Chamber of Deputies. The greatest of the embarrassments arise from its own composition. It is not from that Chamber that we can expect a remedy.'—(*Pairie*, pp. 3-6.)

M. Duveyrier's first pamphlet (from which this extract is taken) was on the Chamber of Peers; being an attempt to persuade that body to consider as theirs the task which the Chamber of Deputies appeared to have abandoned. The circumstances which, in his opinion, mark out the less popular branch of the French legislature, for the office of introducing matured and systematic principles of government into the public

affairs of France, are, first, its independence of the partial and local interests of constituencies, and secondly, the composition of its *personnel.*

The Chamber of Peers, even when hereditary, was a body of a very different character from the House of Lords. It consisted indeed, for the most part, like that assembly, of the wealthiest landed proprietors; but, in England, to represent these is to represent the principal power in the state; while, in France, 'the monarchy of the middle class'—wealth, as such, has but little political power, and landed wealth rather less than even Commercial: the Chamber of Peers, therefore, was a body of exceedingly small importance. Once and once only, for a short period, the accidental coincidence between its tendencies and those of public opinion, invested it with a popularity not its own; when, with the caution inherent in a body of old and rich men, it withstood the counter-revolutionary madness of Charles X., which at last cost him his throne. He swamped it by a large creation, and it relapsed into insignificance. In 1831, its destruction, in its pristine character, was completed by the abolition of its hereditary privilege. But, in losing this, it received what in our author's view was far more than an equivalent. In ceasing to represent the remains of what had once been powerful, the *noblesse* and *la grande proprieté*, it became the representative of an existing power—of one of the leading influences in society as at present constituted.

The King names the Peers for life; but he is only empowered to name them from certain enumerated classes or 'categories;' consisting chiefly (members of the Institute being almost the sole exception) of persons who have served the state for a certain number of years; either in the Chamber of Deputies, or as functionaries in the different departments of the government. The peerage, therefore, is naturally composed of the most eminent public servants—those who combine talents with experience; and it represents a class of great importance in existing society—the administrative body.

'Every people comprises, and probably will always comprise, two societies, an *administration* and a *public*; the one, of which the general interest is the supreme law, where positions are not hereditary, but the principle is that of classing its members according to their merit, and rewarding them according to their works; and where the moderation of salaries is compensated by their fixity, and especially by honour and consideration. The other, composed of landed proprietors, of capitalists, of masters and workmen, among whom the supreme law is that of inheritance, the principal rule of conduct is personal interest, competition and struggle the favourite elements,

'These two societies serve mutually as a counterpoise; they continually act and react upon one another. The public tends to introduce into the administration the stimulus naturally wanting to it, the principle of emulation. The administration, conformably to its appointed purpose, tends to introduce more and more into the mass of the public, elements of order and forethought. In this twofold direction, the administration and the public have rendered, and do render daily to each other, reciprocal services.'—(*La Pairie*, p. 12.)

The Chamber of Deputies, (he proceeds to say,) represents the public and its tendencies. The Chamber of Peers represents, or from its constitution is fitted to represent, those who are or have been public functionaries: whose appointed duty and occupation it has been to look at questions from the point of view not of any mere local or sectional, but of the general interest; and who have the judgment and knowledge resulting from labour and experience. To a body like this, it naturally belongs to take the initiative in all legislation, not of a constitutional or organic character. If, in the natural course of things, well-considered views of policy are any where to be looked for, it must be among such a body. To no other acceptance can such views, when originating elsewhere, be so appropriately submitted—through no other organ so fitly introduced into the laws.

We shall not enter into the considerations by which the author attempts to impress upon the Peers this elevated view of their function in the commonwealth. On a new body, starting fresh as a senate, those considerations might have influence. But the senate of France is not a new body. It set out on the discredited foundation of the old hereditary chamber; and its change of character only takes place gradually, as the members die off. To redeem a lost position is more difficult than to create a new one. The new members, joining a body of no weight, become accustomed to political insignificance; they have mostly passed the age of enterprise; and the Peerage is considered little else than an honourable retirement for the invalids of the public service. M. Duveyrier's suggestion has made some impression upon the public; it has gained him the public ear, and launched his doctrines into discussion; but we do not find that the conduct of the Peers has been at all affected by it. Energy is precisely that quality which, if men have it not of themselves, cannot be breathed into them by other people's advice and exhortations. There are involved, however, in this speculation, some ideas of a more general character; not unworthy of the attention of those who concern themselves about the social changes which the future must produce.

There are, we believe, few real thinkers, of whatever party,

who have not reflected with some anxiety upon the views which have become current of late; respecting the irresistible tendency of modern society towards democracy. The sure, and now no longer slow, advance, by which the classes hitherto in the ascendant are merging into the common mass, and all other forces giving way before the power of mere numbers, is well calculated to inspire uneasiness; even in those to whom democracy *per se* presents nothing alarming. It is not the uncontrolled ascendency of popular power, but of any power, which is formidable. There is no one power in society, or capable of being constituted in it, of which the influences do not become mischievous as soon as it reigns uncontrolled—as soon as it becomes exempted from any necessity of being in the right, by being able to make its mere will prevail, without the condition of a previous struggle. To render its ascendency safe, it must be fitted with correctives and counteractives, possessing the qualities opposite to its characteristic defects. Now, the defects to which the government of numbers, whether in the pure American, or in the mixed English form, is most liable, are precisely those of a public, as compared with an administration. Want of appreciation of distant objects and remote consequences; where an object is desired, want both of an adequate sense of practical difficulties, and of the sagacity necessary for eluding them; disregard of traditions, and of maxims sanctioned by experience; an undervaluing of the importance of fixed rules, when immediate purposes require a departure from them—these are among the acknowledged dangers of popular government; and there is the still greater, though less recognised, danger, of being ruled by a spirit of suspicious and intolerant mediocrity. Taking these things into consideration, and also the progressive decline of the existing checks and counterpoises, and the little probability there is that the influence of mere wealth, still less of birth, will be sufficient hereafter to restrain the tendencies of the growing power, by mere passive resistance; we do not think that a nation whose historical *antécédens* give it any choice, could select a fitter basis upon which to ground the counterbalancing power in the State, than the principle of the French Upper House. The defects of Representative Assemblies are, in substance, those of unskilled politicians. The mode of raising a power most competent to their correction, would be an organization and combination of the skilled. History affords the example of a government carried on for centuries with the greatest consistency of purpose, and the highest skill and talent, ever realized in public affairs; and it was constituted on this very principle. The Roman Senate was a Senate for life; composed of all who had

filled high offices in the State, and were not disqualified by a public note of disgrace. The faults of the Roman policy were in its ends; which, however, were those of all the States of the ancient world. Its choice of means was consummate. This government, and others distantly approaching to it, have given to aristocracy all the credit which it has obtained for constancy and wisdom. A Senate of some such description, composed of persons no longer young, and whose reputation is already gained, will necessarily lean to the Conservative side; but not with the blind, merely instinctive, spirit of conservatism, generated by mere wealth or social importance, unearned by previous labour. Such a body would secure a due hearing and a reasonable regard for precedent and established rule. It would disarm jealousy by its freedom from any class interest; and while it never could become the really predominant power in the State, still, since its position would be the consequence of recognised merit and actual services to the public, it would have as much personal influence, and excite as little hostility, as is compatible with resisting in any degree the tendencies of the really strongest power.

There is another class of considerations connected with Representative Governments, to which we shall also briefly advert. In proportion as it has been better understood what legislation is, and the unity of plan as well as maturity of deliberation which are essential to it, thinking persons have asked themselves the question—Whether a popular body of 658 or 459 members, not specially educated for the purpose, having served no apprenticeship and undergone no examination, and who transact business in the forms and very much in the spirit of a debating society, can have as its peculiarly appropriate office to make laws? Whether that is not a work certain to be spoiled by putting such a superfluous number of hands upon it? Whether it is not essentially a business for one, or a very small number, of most carefully prepared and selected individuals? And whether the proper office of a Representative Body, (in addition to controlling the public expenditure, and deciding who shall hold office,) be not that of *discussing* all national interests; of giving expression to the wishes and feelings of the country; and granting or withholding its consent to the laws which others make, rather than of themselves framing, or even altering them? The law of this and most other nations is already such a chaos, that the quality of what is yearly added does not materially affect the general mass; but in a country possessed of a real Code or Digest, and desirous of retaining that advantage, who could think without dismay of its being tampered with at the will of a body like the

House of Commons, or the Chamber of Deputies? Imperfect as is the French Code, the inconveniences arising from this cause are already strongly felt; and they afford an additional inducement for associating with the popular body a skilled Senate, or Council of Legislation, which, whatever might be its special constitution, must be grounded upon some form of the principle which we have now considered.

M. Duveyrier does not often return, except in the way of incidental allusion, to his idea respecting the Peers; but the conception of the administration, or corps of public functionaries, as the social element to which France must look for improvements in her political system, is carried through the whole series of Pamphlets; and he attempts to avail himself of every side-current of opinion to steer into this harbour. This is especially seen in his Letter to the Duke de Nemours, on *The State and Prospects of Aristocracy in France.* According to this Letter, there is now a distinct acknowledged tendency in the French mind towards aristocracy; a tendency hailed by some, dreaded and rejected by others, but denied by no one. 'The 'best and sincerest thinkers cannot see without alarm the narrow 'interval which separates the two forces between which the 'government is divided.' Experience proves, that 'when the 'popular and the royal power stand singly opposed to one 'another, a struggle commences, and one inevitably overpowers 'the other. Men ask themselves, were some unforeseen circumstance to rekindle the conflict, on which side would be the 'victory, and whether a Republic or an Absolute Monarchy is 'most to be dreaded? And a Republic is not considered as 'the most imminent nor the most formidable danger. The 'wisdom of the King, men say, has fortified the regal power; 'but the precautions by which the popular power has attempted 'to ensure its control, have turned to its confusion. The '*bourgeoisie* only uses its influence to break up, by intrigue, 'cabinets which only maintain themselves by the distribution of 'favours. Thus lowered in its own esteem, and in that of 'others, what salutary restraint can it impose upon the executive power, which the interest of the ministers lies in extending perpetually? France, therefore, marches by a sort of 'fatality towards Despotism. But after Despotism come revolutions, and in revolutions dynasties disappear.'

Not only on these political, but also on moral grounds, M. Duveyrier contends for the necessity of intermediate ranks, and a third power interposed between the Royal and the Popular. We give these passages in his own words:—

'La plaie que tout le monde signale, dont tout le monde souffre,

n'est-elle pas ce nivellement hors de nature, qui prétend s'imposer à toutes les situations, à toutes les intelligences, à tous les intérêts ; cette personalité brutale, ce démon de l'envie, cet amour effréné de soi-même, qui s'empare de tout—familles, cités, industries ?'

No degree of jealousy of natural superiorities, he continues, can prevent them from existing ; talents, riches, even historical descent, are still instruments of power ; but the social arrangements not being such as to make these powers available for public uses, they work only for the personal ends of the possessors.

'Et pourquoi s'en étonner ? Quand la grandeur et l'utilité des œuvres ne suffisent plus pour enrichir, pour ennoblir celui qui les produit, quand on refuse les égards les plus légitimes aux dévoûmens, à la gloire, aux services publics, pourquoi s'étonner que le talent se rende à lui-même l'hommage qu'on lui réfuse, et qu'il tourne en vil métier les plus sublimes professions ?

'On a cru fonder le règne de l'égalité ; vaine erreur ! L'aristocratie n'est plus, mais le monde est plein d'aristocrates. Toute la difference, c'est que les privilégiés sont désunis ; qu'ils ne forment plus corps ; qu'il n'existe plus entre eux de point d'honneur. Ils sont toujours au-dessus de la foule ; ils peuvent plus qu'elle ; mais à cette supériorité d'influence n'est attachée la pratique d'aucune vertu, ni désintéressement, ni bravoure, ni magnificence, aucune obligation morale, aucun service patriotique. La conscience d'une supériorité de nature et de droits est toujours la même ; le niveau n'a passé que sur les devoirs.'

These arguments for an Aristocracy have not so much novelty or originality, as the views which our author promulgates respecting the mode of supplying the desideratum. An aristocracy, he says, can never be constituted but on the basis of a public function. Even the feudal nobility 'originated in the 'diversity of certain military functions, and in the relations of 'subordination which arose between them. Dukes were com-'manders of armies ; Marquises were guardians of the frontiers ; 'Counts, governors of provinces ; the Barons were the principal 'officers attached to the person of the Monarch ; Chevaliers were 'inferior officers. Most of these functions were originally per-'sonal, and the nobility which they conferred was so too.' Nor was the title ever, during the vigour of the institution, dissevered in the minds of men from the duties which it imposed.

'*Noblesse oblige !* Such was the first lesson inculcated upon 'the heir of the title. He was considered to be under the obli-'gation of all generous sentiments, of magnificence, of intrepi-'dity ; so universal was the opinion that the title was only the 'sign of a function, and the privileges conferred by it the just 'reward of public services, of duties from which the *titulaire* 'could not withdraw himself without meanness and dishonour.'

But although feudal dignities, as he justly says, were originally symbols of services, he treats with deserved contempt the idea, that any useful end could be answered by merely creating from the ranks of personal merit, after the foolish example of Napoleon, Dukes, Counts, and Barons.

'The question is not about ennobling men by distributing among them the titles of public functions which for the last eight or ten centuries have ceased to exist. The question is of ennobling the functions and public employments of modern times; of raising them gradually to such a degree of honour, that their denominations may become, for future ages, real titles of nobility.

'The nobility, then, which we have now to create, is *la noblesse gouvernementale*; and, to say the truth, there has never existed any other. If there be understood by aristocracy a body of individuals distinguished by titles and designations to which are not attached any attributes of government, be assured that the nobility meant is a nobility in its decline. At its origin, or in the time of its greatest eminence, every aristocracy governs. What requires to be ennobled now, is office, power, public trusts. We should desire to see the idea become general, that every one who takes a share in the government of his country is bound to show more virtue, more patriotism, more greatness of soul than the vulgar. This was already the spirit of the old noblesse. In the time of its splendour, there was one sort of people who might postpone the interest of the state to that of their families; there were others for whom it was a perpetual duty to sacrifice their families to the state. The former, when the enemy invaded their native soil, might without dishonour avoid the danger, shut themselves up in their houses, preserve themselves for their wives and children—these were the *bourgeois* and the "vilains, taillables et corvéables;" but the others were obliged to quit every thing, wives, children, lands and manors, and rush to meet the enemy—these were the nobles, who owed to their country the impost of blood.'—(*Lettres Politiques*, i. 69-84.)

We are thus brought back, by a rather circuitous course, to our author's idea respecting the class of public functionaries, as the only material from which a distinguished class,—a new Aristocracy,—can arise. Does he propose, then, to make them an aristocracy? An aristocracy, according to him, cannot be made. It must make itself. The Judicial Order, the *noblesse de robe*, made itself an aristocracy by its own conduct. The new aristocracy must do the same. He asks no privileges for it; least of all, any hereditary privilege. He aims at investing the class with the various conditions necessary to make them deserve, and, by deserving, obtain, the respect and consideration of the public.

'Fixity, in the first place. Nothing is more adverse to the influence

which the administrator should possess over his *administrés*, than those frequent changes of residence, which permit only a very small number to familiarize themselves with the special wants of their localities, and to acquire the confidence of the public.

'Responsibility, in the second place. The excessive centralization which keeps in the hands of the Ministers (who alone are responsible) the decision of even the simplest questions, and the distribution of even the most trifling employments, takes away from official station its consideration and its authority. The influence which every *employé* in the lower grades is able to exercise through some deputy, so as to frustrate the just *surveillance* of his superiors, relaxes the ties of official connexion, and is a discouragement to zeal. How can you expect earnestness and self-devotion from a functionary who can neither protect talent, nor repress insolence, nor cashier laziness and incapacity?—(*Lettres Politiques*, i. 85.)

As a third condition, he insists on the necessity of increasing the salaries of public offices; and doubtless not without reason. It is well known that French governments are as parsimonious in remunerating their *employés*, as prodigal in augmenting the number.

To this, and other considerations connected with the same subject, our author returns in the first letter of the second volume; one of those in which he expresses his opinion with greatest freedom on the system of government now prevailing in France. The principle established by the Revolution, the equal admissibility of all to public employment, has become, he says, merely nominal; for 'since the revolution of July two important 'classes have ceased to furnish their quota to public offices; the 'great proprietors and the non-proprietors.'

'On the one hand, the political services required from most of the functionaries of the administration, the extra-official aid expected from them in the management of elections and the formation of majorities, have gradually diminished the consideration attached to public employments; and have driven away from them the *grands propriétaires*, the inheritors of illustrious names or considerable fortunes.

'On the other hand, the excessive reduction of salaries has rendered it more and more impossible for persons who have no patrimony, to hold any public function of importance. The absence of any examination or *concours* for admission into most civil offices, and the influence exercised over the Ministers (the distributors of place) by the deputies and the electoral colleges, have banished, even from the smallest and obscurest public employment, that numerous class from which the Republic and the Empire had drawn so many of their most brilliant ornaments.'—(ii. 4, 5.)

'What is now remaining of the great effort of Napoleon to honour genius and public services, and to create for them positions equal to the loftiest stations of the European noblesse? Where is now that national proverb, which then prevailed as a truth, through every branch of the

public administration—that the lowest conscript carried in his knapsack the Baton of a Marshal of France? . . . The great positions created by the Empire exist merely in memory. The class which the Restoration did not create, but which it encouraged—to which it gave the greatest share in the management of public affairs—the class of great proprietors, lives isolated, dissatisfied, mistaking its own interests, and allying itself, from mere pettishness, with its most dangerous enemies. The agricultural and labouring classes are relegated to their farms and workshops; and no solicitude, no effort of the government, is exerted to recruit from their ranks, as in the great days of the Republic and Empire, the most ardent and gifted minds. The *bourgeoisie* alone governs; and, by a new form of levelling and equality, claims to reduce every thing to *mesquin* proportions, and to concentrate all rights in the middle regions of the *petite propriété*.'—(ii. 41-2.)

'It has been said with truth, that the American does not believe in poverty. The Frenchman does. . . . Every petty elector is inveterately conservative of his patrimony; and, not choosing to risk any thing for the establishment of his children, he is invincibly prompted to swell the eternal overflow of the small places inscribed in the budget.'—(ii. 170.)

For these several inconveniences he proposes remedies. In the first place, the Government must cease to require from its agents degrading services. All interference in elections by the official agents of Government, must be peremptorily abolished. This might or might not affect injuriously the interests of any existing Ministry. It might or might not render the opposition triumphant, and produce parliamentary reform. If these consequences happen, they must be submitted to. They are not for a moment to be considered in comparison with the object. But,

'The Executive, interdicting all its agents from any official interference, from any interference whatever, in the operations of the electoral body, would immediately restore to public functions their honour and their dignity. The real ability, intelligence, experience, patriotism, and integrity of the servants of the state, would no longer be at each instant brought into suspicion.'—(ii. 34.)

And the greater respectability thus given to office, would again, he says, attract to it the opulent classes;—a thing not in itself undesirable, and indispensably necessary so long as a mistaken economy keeps the salaries low.

But, while preventing placemen from jobbing in elections, it is also needful to prevent electors from jobbing in places. For this and other important purposes, the author's expedient is, to make the conferring of public employments not a matter of favour, but, as far as possible, a Judicial Act. Admission into the public service should be granted only to the candidates who are

pronounced on a public competition the best qualified. A certain proportion of all promotions should be given to seniority. The remainder must be, and (incompetence having been provided against by the initial arrangements) might safely be, dependent upon choice. To secure an abundance of highly qualified candidates, he proposes that there should be a public system of Education for each leading department of the public service. There is already the Polytechnic school, (or College, as we should call it:) English readers often forget that *École*, in French, means a College, and *Collège* a School. There are the military and naval schools, the school of engineers, and the school of mines. To these should be added schools of administration, of judicature, of diplomacy, and of finance. These various suggestions, supported at considerable length and in much detail, are the chief practical topic of the book. From a system of arrangements thus combined, he anticipates that the administrative body would be the *élite* of the practical talent and wisdom of the country; and that not only the business of Government in every department would be conducted with a skill and a purity beyond all present experience, but that the class thus formed, surmounted by its natural representatives, the Peerage for life, would become an Aristocracy in the best sense of the word—an aristocracy unprivileged, but real, and the only one with which the circumstances and social elements of a country similar to France are, in the author's opinion, compatible.

In this speculation the reader has seen, we hope, not without interest, a sample of the manner in which the ever active French intellect is applying itself to the new questions, or old questions in new forms, which the changed aspect of modern society is constantly bringing before it; and of the abundant vein of far from worthless thought, portions of which it is at all times throwing up. The present is no doubt a favourable specimen of such speculations. But they almost all exemplify in their degree, that combination of the theoretical and the practical points of view, which is so happily characteristic of the better order of French thinkers. In England the two modes of thought are kept too much apart; the theories of political philosophers are too purely *a priori;* the suggestions of practical reformers too empirical. In France a foundation in general principles, the result of large views and a philosophic mode of thought, is never dispensed with; but the choice of principles for present application is guided by a systematic appreciation of the state and exigencies of existing society. The appreciation may be more or less successful, and is often, no doubt, a total failure; but some such attempt is invariably made.

As is natural to a French political writer, M. Duveyrier devotes a large part of his attention to external affairs. But he does so in a different spirit from that of the writers and orators whose tone has lately rekindled in foreign nations, against France, much of the jealousy and suspicion of former years. Those who best know France, have been most inclined to believe, that the spirit of these orators and writers was far less widely diffused than superficial appearances indicated; and that even in the assailants themselves it was of a less inveterate character than it seemed to be.

M. Duveyrier has no notion of suppressing the national *amour-propre*; nor would he deem himself at all complimented by being supposed exempt from it. But he endeavours to divert it into a rational and a pacific channel. It is not war, he says, it is not territorial extension, by which national greatness and glory are now acquired. By the arts of peace France must henceforth render herself famous. The sufferings and struggles of half a century, and the social and mental advantages which she has bought at so dear a price, have made it her part to assume the initiative in perfecting the machinery and the principles of civil government.

'Elle forme à cet égard comme un atelier d'essai au profit du globe entier. . . L'œuvre caractéristique de la nation Française est le perfectionnement, au profit d'elle-même et de toutes les autres, non seulement des rouages administratifs et politiques, mais des bases mêmes de la société et de la civilisation.'—(i. 127, 129.)

The author is faithful to his Programme. He advises France to renounce, once for all, the popular object of the Rhenish frontier. He calls it a 'misérable intérêt de vanité,' and tells her besides, that she cannot have Algiers and the Rhine too. He exhorts her to set an example to Turkey how to govern its Christian subjects, by the manner in which she, in Algeria, can govern her Mussulmans. He recommends an alliance with Germany for peaceful, rather than with Russia, for warlike purposes. To acquire the respect of Europe, her Foreign policy, he says, must be not war and aggrandizement, nor propagandism, but Arbitration and mediation. He would have her combine with Prussia and Austria for the protection of the secondary Powers. He would have international differences decided, not by the coarse expedient of fighting, but by the impartial intervention of friendly powers; nor does he despair of seeing the war of Tariffs, which has succeeded to the war of Armies, terminated in a similar manner; and the adjustment of commercial relations made a matter of general arrangement by Congresses or Conferences among all the powers of Europe. In none of these things does he see insuperable

difficulties, if a great nation, like France, would identify herself with them, and make them the leading aim of her external policy.

These are worthy objects; but it may be doubted whether a nation, to which it is necessary to recommend them as means of regaining that importance in the world, which can no longer be successfully sought by war and conquest, is the most likely to render them acceptable to other nations. Plato says, that a people ought to search out and impress as its Governors the persons who most dislike and avoid the office. It is certain, that those who eagerly thrust themselves into other people's disputes, though it be only as arbitrators, are seldom very cordially welcomed; and that those are rarely the best managers of other people's affairs, who have most taste for the bustle and self-importance of management. If, however, men have a taste for meddling, it is better that they should meddle to befriend others, than to oppress and domineer over them; and M. Duveyrier is doing a useful thing, in inculcating upon his countrymen the superiority of the more philanthropic mode of indulging the propensity.

In domestic policy he proclaims the same principle, of peaceful arbitration; the adjustment of conflicting interests, with the least possible hardship and disturbance to any one. His watch-words are, *justice* and *compromise*. To postpone all partial interests to the general interest, but to compensate liberally all from whom sacrifices of their private interest are demanded; and to make up, as far as circumstances permit, to the weaker and less fortunate members of society, for whatever disadvantages they lie under in their relations with the strong:—these are his maxims.

Under these different heads, he opens various subjects of discussion; some of which are by no means ripe for a final opinion, and to which we can only cursorily allude. That he is for a progressive reduction of protecting duties, is a matter of course. He has, at the same time, much to say in favour of alleviating the losses of those who suffer by reforms in legislation; or even by improvements in production. These, however, are minor topics compared with one from which no political thinker of any importance can now avert his thoughts;—the improvement of the existing relations between what is designated as the labouring portion of the community, and their employers: the question known to Continental thinkers under the technical appellation of the Organization of Labour.

This is not a subject upon which to enter at the conclusion of an article, nor is it in any sense a principal topic of M. Duveyrier's book. He contents himself with pointing to it in the

distance, as a problem waiting for a solution in the depths of futurity. It is possible that, like most French philanthropists, he has in view, as an ultimate possibility, a greater degree of authoritative intervention in contracts relating to labour, than would conduce to the desired end; or be consistent with the proper limits of the functions of government. But he proposes for present adoption, nothing but what is reasonable and useful. He bids the government encourage and favour what is voluntarily done by employers of labour, to raise their labourers from the situation of hired servants, to that of partners in the concern, having a pecuniary interest in the profits. He recommends to honour and imitation the example of M. Leclaire, (mentioned in a former number of this Review,) who has organized his business on the plan of allowing to himself, as well as to each of his *employés*, a fixed salary; and sharing the surplus among the whole body in rateable proportion to the salaries; and who, it appears, has found this system even lucrative to himself, as well as highly advantageous to his labourers.

We have exhibited, we think, enough of the contents of these volumes to justify our favourable opinion of them. On the unfavourable side there is little that we think it important to notice, except a degree of flattery to some of the Chiefs of the ruling party, and especially to the present King of the French;—probably, however, in the author's eyes, not exceeding the courtesy due to persons in high authority, from one of their own supporters, when he volunteers important, and not always agreeable advice. The style is easy and spirited, occasionally rising into eloquence; and not more diffuse than belongs to the nature of modern periodical writing.

ART. VIII.—*A Bill intituled an Act for Securing the Due Administration of Charitable Trusts in England and Wales.* Ordered by the House of Lords to be Printed, 19th February 1846.

THE Bill for securing the due Administration of Charitable Trusts in England and Wales, is one of the most important administrative measures which has been proposed during the present century.

It affects more than Ten Thousand Charities, actually receiving an income of more than £1,500,000 a-year, and entitled to much more, and managed by at least 50,000 Trustees. The extent of the Land reported by the Commissioners of enquiry into Charities, as ascertained by them to belong to the Charities which they examined, is 442,915 acres. The greater part of this land is in the immediate neighbourhood of towns. Much of it, therefore, is building-ground, and the remainder, from its situation, more valuable than the average land of England. At £100 an acre it would be worth more than forty-four millions. But a large portion of the land is omitted—the quantity not having been ascertained. The sites of houses are also omitted, and a considerable portion of charity land is covered by them. In the first ten columns of the Analytical Digest of the Commissioners' Reports, we find seven hundred and seventy-five houses; and as there are eight hundred and twenty-four such columns, if these ten be, as is probably the case, a fair specimen, the whole number of houses must be above sixty-three thousand; worth, at £200 a house, more than twelve millions more. To this must be added the value of rent-charges, mortgages, and funded property. And there must be further added the property of the numerous Charities to which the enquiries of the Commissioners did not extend. On the whole, we are inclined to believe that the whole value of the lands, houses, rent-charges, and personal property permanently dedicated in England and Wales to Charitable Purposes, is not less than from seventy-five to one hundred millions. Of this vast property, a considerable part is withheld by claimants under adverse titles, or under no title at all, or by fraudulent lessees. Of the remainder, by far the larger portion is now employed usefully, but yet in a manner capable of improvement; a great portion is wasted on purposes useless, though not positively injurious; and no inconsiderable part is applied in a manner absolutely mischievous,—in political corruption, or in the encouragement of idleness or improvidence. Many a borough owes its venal electors, and

many a parish its paupers, to the unwise or ill-administered charities of its benefactors.

The only remedy by which the robbery, waste, or misapplication of a charitable fund can be stopped, is an application to the Court of Chancery. That court is unquestionably in many respects an admirable Tribunal. It is powerful, wise, and just. If it were cheap, if it were only moderately costly, it would be the best court in Europe. Unhappily, it is one of the most expensive that the world has ever seen. This arises principally from its excessive centralization. Every matter referred to it must be heard and decided in London. The first consequence is, that every enquiry, unless it be a mere London question, must be managed by four sets of Solicitors. There must, first, be the Solicitors of each party in the country, and then each of these Solicitors acts through the London Solicitor who is his agent. Thus four sets of expenses are incurred. In the next place, either the whole evidence must be written, or the witnesses must travel to London, and remain there, until their evidence is wanted. Matters that might be investigated and disposed of in five or six days, by a Judge on the spot, last through as many years, and cost as many hundreds, when the enquiry takes place two hundred miles off, and is managed by persons who, as they always urge in excuse of their ignorance of facts, are mere agents, and must constantly refer for information and instructions to their country correspondents. Under such circumstances, in any small charity, however gross be the fraud, however mischievous the abuse, to invoke the Court of Chancery is knowingly and designedly to make justice a present of the Oyster.

In the Case of the Attorney-general v. Nethercoat, the income of a charity property worth about L.3000, had been misapplied in payment of poor rates and church rates. An information was filed in the Court of Chancery, and a long litigation ensued; the expense of which, from time to time, was partially defrayed by sales of portions of the property. At length, a final decree was made, which declared that the income of the charity ought in future to be applied for the benefit of the poor not receiving relief from the rates—removed the existing trustees—and directed the further costs to be raised by sale or mortgage, and a scheme to be framed for the application of the residuary income.

The property now remaining was an estate producing L.105 a-year. The unsatisfied costs amounted to L.2000. That sum was raised by mortgage at four and a half per cent. There remains therefore, for the purposes of the charity, L.15 a-year, being about one-tenth of the original income!

In another Case, an information was filed to ascertain, among other things, the boundaries of some charity lands. A hedge had been grubbed up, and the land taken in by a neighbouring occupier. The site of the hedge was worth about L.20. L.200 was spent in ascertaining whether it belonged to the charity or to the owner of the adjoining freehold. As a general rule, it may be laid down, that the instant a charity not exceeding L.30 a-year becomes the subject of a suit, it is gone. One of L.60 a-year is reduced one half, one of L.100 a-year, one third. The prudent friends of such a charity, will submit to see it mismanaged to any extent short of the destruction of all its utility, rather than risk its utter annihilation by the ruinous protection of the court. But a charity has often in its neighbourhood friends who are not prudent, or whose prudence is overcome by their hostility to its actual administrators; or, what is worse than even imprudent friends, Attorneys anxious for business. Its administration is denounced in the vestry, or in the town-hall, as illegal, corrupt, and mischievous. The Trustees defend it as one of the few samples of perfect wisdom, and perfect disinterestedness. The Attorneys inflame the disputants. An information is filed, costs are incurred, it is perceived that the party which fails will have to pay the greater part of them; and the contest goes on perhaps, for years, for no practical purposes but giving profit to the Attorneys, and deciding out of whose pocket it is to come.

But this enormous, devouring expensiveness, is not the only quality which unfits the Court of Chancery for the superintendence of Charities. It is subject to the further defect, that its action is merely judicial and legal. It cannot act, therefore, until it is set in motion by some formal complaint. Whatever be the abuses to which a charity is misapplied, the court can take no notice of them, unless and until some one calls its attention by a bill, a petition, or an information. And the abuses which it can rectify are only technical abuses; that is to say, the application of the property to purposes which the founder did not sanction. It is in vain that the Trustees urge, that what are called abuses are, in fact, improvements; that they are such as the founder, if he had lived in these times, must have desired; that the object which he had in view two hundred and fifty years ago, has ceased to be beneficial; or that the means which he directed to be employed, have ceased to be effective. The Court cannot enter into these questions of expediency. Its duty is to see that the Will of the Founder is adhered to. He founded, perhaps, a grammar school, in which ten boys were to be taught Latin. A commercial school has been substituted, in which two hundred are taught English. It is in vain that the neighbours

protest that they want a commercial, and do not want a Latin school; that they show that teaching ten boys Latin would cost more than teaching two hundred English; that ten boys, or five boys, to whom Latin would be useful, are not to be found in the district; and that there are five hundred who wish to learn English. 'All this may be true,' answers the Judge; 'but this court 'has nothing to do with it. My duty is to carry into effect the 'trusts of the Testator's Will. If you want to alter them, get an 'Act of Parliament.' Again, a Testator, only half recovered from the prejudices of Popery, and the habits of conventual almsgiving, ordered periodical distributions of money among the indigent. The guardians complain that these distributions promote the indigence which they were intended to relieve; that every distribution is followed by drunkenness and sloth; and that the parish is almost ruined by pauper settlers, whom the hope of these distributions attracts. They refer, perhaps, to a period of parochial prosperity and morality, when the owner of the estate liable to these distributions withheld them; or the Trustees misapplied them. But the Charity Commissioners have discovered the charge; the owner has submitted to it; and the consequence is, that the temperance and industry of the labourers are seriously impaired. The Court can give no relief. The purpose is lawful—the trust is explicit. It must be performed, whatever may be the consequences.

As a remedy for these evils, a Bill was introduced by Lord Lyndhurst last year, and passed through the House of Lords, but was abandoned, with many others of inferior importance, in the general sacrifice made by the Government, in July, of the measures which it found itself, or thought itself, unable to carry. The present measure does not differ materially from that Bill. Before we consider its merits, we will briefly state its principal provisions:—

It enables the Lord Chancellor to appoint three Commissioners of Charities, and also two Inspectors of Charities, who are to be the immediate subordinate officers of the Commissioners. The Commissioners to hold during good behaviour; the Inspectors to be removable at will, by the Lord Chancellor. The Commissioners are to appoint and remove at will their Secretary, Clerks, and other officers.

The powers and duties of the Commissioners may be divided into three classes:—1st, Those which affect all charities. 2d, Those which affect only charities whose income does not exceed L.100 a-year. 3d, Those which affect only the charities which, before the municipal reform act, were vested in municipal corporations.

I. They may (section 12), on the application of the Trustees, direct the mortgage, sale, or exchange, of all charity property, the grant of building and other leases, and the working of mines. This enables them to act as the managers of about one-fiftieth of the cultivated land of England. They may (section 20) authorize the compromise of any claims by Charities, and any complaints made on their behalf, against any persons, for neglect, abuse, or breach of trust. They are required (sections 20 and 52) to direct the modes in which the accounts of all Charities shall be kept and audited, and are to receive every year statements of their receipt and expenditure. They may (sections 19, 22, and 23,) enquire into the receipt and application of the revenues of any Charity,—require accounts, vouchers, and returns, and call before them any trustees or officers, and examine them on oath. They are required (section 53) once in every three years, to make a report to the Crown of the revenue and expenditure of all Charities; and to state whether any and what Charities have ceased to be beneficial, or have become injurious, and what require to be regulated or reformed. They are (sections 49, 50) to register all Deeds affecting Charities, and to direct their safe custody, or to take care of them themselves.

II. Such are their general powers and duties. Those which affect charities of only L.100 a-year, are of course still more extensive. The material ones are contained in sections 10, 13, 14, 18, and 19. On receiving any information as to the mismanagement of such a Charity, the Commissioners may hold a court on the spot, or in the neighbourhood; call before them the parties and witnesses, and summarily determine the matter; order the payment of money belonging to the charity in the hands of any of its officers; charge them with simple or compound interest; may themselves remove Trustees, and direct the removal of other officers guilty of abuse, breach of trust, or simple neglect; substitute new Trustees, and regulate the future management of the charity. They may appoint Trustees where there are none, or an insufficient number; and, where the original purposes of the charity have failed, they may direct the property to be applied to such charitable purposes as they may think fit. They may (section 50) rehear their own decisions within two months*

* This time is far too short. As the bill stands, not only the application for rehearing, but even the decision, must be made within two months after the original proceeding. At least four months should be allowed for an application to rehear, and the court should be required to make a final decision within a given time, after receiving the application, or within such further time as they shall, from time to time, appoint.

after they have been made, but there is no appeal from their final determination. "Their orders," says the 10th section, 'are 'to be final and conclusive, and not subject to any review, un-'less the commissioners shall think fit, under the above-mentioned 'power, to rehear them.' The only check on their discretion is, that, in some cases, the consent of the special visitor of the charity, or of the Bishop where there is no special visitor, is required to a change in the application of the fund.

III. With respect to the Charities formerly vested in municipal corporations, the Commissioners may, under sections 45 and 47, on the application of ten householders, appoint trustees where none have been appointed under the Municipal Corporations' Act; and where trustees have been appointed under that act, they may, on a representation from ten householders that the fair administration of the trust is not secured, appoint such a number of additional trustees as they may think necessary to secure impartiality. And in all cases under the Municipal Corporations' Act, except those in which a trustee has been removed by the Court of Chancery, they are to fill up all future vacancies. In this case alone their decision is subject to appeal, which lies to the Lord Chancellor.

Without doubt these are very extensive powers; they are such as no English court, indeed, such as no English Sovereign, has ever possessed. The bill is a step in centralization, as much in advance of the Poor-Law Amendment Act, as that act was in advance of all that had been done before. That act created about sixteen thousand guardians; but it carefully excluded the Commissioners from any share in their nomination. The Charity Commissioners are themselves to nominate. They will probably appoint several hundred trustees every year. In the course of a few years all the trustees of charities under one hundred pounds a-year, and of the municipal charities, will be their nominees. And whether appointed by them or not, the whole body will be under their control. They may harass them by enquiries, annoy them by regulations, censure them by their Reports; or, on the other hand, assist them in their prospective arrangements, and sanction their past conduct.

To defend such extraordinary powers, it must be shown, first, that they are necessary, or at least clearly and undeniably expedient; and secondly, that the Commissioners to whom they are to be confided, are likely to be properly selected; and when selected, adequately controlled.

1. It cannot be said that any of their general powers, those which we have designated as No. I., are absolutely necessary; and we are inclined to doubt whether all of them are expedient.

The two first powers, those to authorize the selling, mortgaging,

exchanging, and leasing all charity lands, and the compromise of all suits, might unquestionably, in the hands of corrupt or merely careless Commissioners, be the means of nearly unlimited jobbing. Under the first, they may authorize almost any use whatever to be made of the charity property. It may be thrown into a park, or removed out of sight, or converted into money, or let to a friend; and as every transaction which they sanction is to be valid at law, and in equity, there will be no means of correcting their errors. Under the second power they may screen any amount of fraud or misconduct. They are empowered to put 'a final bar to all actions and claims on the part of a 'charity.' We do not say that these powers ought not, in the present state of public morality, to be given; but we venture to affirm, that if such powers had been granted a hundred years ago, or perhaps fifty years ago, very little land would now be in the hands of charities. The triennial Reports which are to state the revenue and expenditure of all charities, and to mark those which have ceased to be beneficial, or require reform or regulation, will swell to an extent which the framers of the bill can scarcely have contemplated. The two first volumes of the analytical digest of charities, published in 1842, which are merely an Index, giving a line or two to each, contain sixteen hundred and fifty folio pages. Of the charities which they mention, how many thousands require reform or regulation? The Report, of course, is not to be a dry statement that reform is wanting. It must state in each case the abuses and imperfections, and point out the remedy. How many volumes will be requisite? How much labour and consideration must be employed on them? What constant inquisition into the management of each trust will be necessary to enable the commissioners to report that it requires no alteration? What a field for speculation is opened by the duty of stating what charities have ceased to be beneficial? We think that the better plan would be to require the Commissioners to Report as to the merits only of the charities respecting which some specific complaint has been made to them; or which, in their discretion, they may think it is advisable to bring before the public.

2. The powers given to the Commissioners over charities not exceeding L.100 a-year, are Dictatorial. But this is a case for a Dictatorship. We have seen, that to pass one of these charities through an expensive court is to ruin it. All forms are expensive; therefore the process must be summary. All enquiries carried on from a distance are expensive; therefore the tribunal must be local. All appeals are expensive; therefore its sentence must be definitive. From these premises the powers given to the commissioners are logically inferred.

3. The powers of the Commissioners which respect municipal charities are less called for, and we fear that some of them may produce on the whole a balance of inconvenience.

The forty-seventh section enables the Commissioners to interfere, if ten freeholders complain not of any actual abuse, but that an impartial administration of the trust is not secured. If, for instance, there are thirteen trustees, ten Tories and three Whigs, some electioneering partisan or some Attorney, anxious, like Gil Blas, *pour le bien des pauvres*, may use ten householders as his puppets to support a complaint of partiality. He will try to show that Tory old women are better attended to than Whig old women; or that a Tory pauper has been made porter, and a Whig pauper dismissed; and he will propose seven Whigs as additional trustees. The existing Trustees will fight every case of supposed partiality, and they will maintain that, even if additional trustees are to be appointed, those proposed are the very worst that could be selected;—that they are men of irreligious habits, loose morals, and gross conversation. The proposed trustees will demand a full opportunity to defend their characters. The question whether A B, C D, E F, G H, I K, and L M, are or are not men of sound opinions, or irreproachable behaviour, will become a party contest. Hosts of witnesses will depose on each side, and the peace of the borough will be disturbed for years.

If a jurisdiction so liable to abuse is to be given to the Commissioners, the least check that can be required is, that the Commissioners should be empowered to throw the expense on the complainants. We think, indeed, that in all cases of complaint they ought to have that power.

We must add that the forty-eighth clause, imposing a religious test on members of every trust in any way connected with the Church of England, requires some alteration. This section is a repetition, but with one important addition, of a clause which was inserted in the bill of last year by the Committee. Under that clause, if £1000 a-year had been vested in Trustees, in trust as to £995 for a hospital, and £5 for the repair of a church, no dissenter could have been a member. But the present bill adds, 'that the concurrence of a trustee who has not taken the pro-'posed test shall not be necessary to the validity of the acts of 'his colleagues.' It implies, therefore, that a dissenter may, in the supposed case, be a trustee, though he must not intermeddle in the Church of England part of the charity. This, however, requires to be more clearly and definitely expressed.

We now come to the last branch of the subject—the class from which these important functionaries are to be selected; the person who is to select them; and the tenure by which they are to hold

office. On the two first of these points the measure has been several times altered.

As it was first introduced last year, the Commissioners and Inspectors were to be appointed by one of the Secretaries of State, and no qualification was required. As it was amended in committee, they were all to be appointed by the Lord Chancellor; and the Commissioners were to consist of two Masters in Chancery and a Barrister of ten years' standing. Under the present bill the appointments still remain with the Chancellor, but the persons eligible as Commissioners are vice-chancellors, masters in chancery, persons who have held either of those offices, or that of chief-justice of Bengal, and practising Serjeants or Barristers of twelve years' standing. As to the official persons from among whom the Commissioners may be selected, we have no remark to make. The prescribed qualification secures their being men of legal knowledge and judicial habits; and of sufficient eminence to be strongly under the control of public opinion. No man in such a station would lend himself to a job, personal or political. The other qualification, twelve years' standing at the Bar, secures only Legal experience. We venture to suggest the Conveyancing Bar as likely to afford the best candidates. The legal business of the commissioners will be almost altogether Conveyancing; and that Bar, little drained by preferment, contains a remarkable proportion of men distinguished by learning, diligence, and talent.

We have seen that, as the bill now stands, the appointment of the Commissioners rests with the Chancellor, and that it was originally given to the Secretary of State. We should much prefer its being vested in the Crown. The Chancellor must, of course, have always a preponderating voice in all legal appointments; and, if the appointment be under the great seal, he will be technically as well as morally responsible; but, if he have the sole nomination, he alone will be responsible. If it rest with the Crown, the Prime Minister at least will share the responsibility. This will be a great safeguard against hasty appointments. It is generally admitted that the substitution by Lord Brougham, of the Crown for the Chancellor, in the appointment of Masters in Chancery, has been beneficial. And it must be added that there are two ministers, each of whom will probably come more in contact with the commissioners; namely, the Home Secretary and the President of the Council. The President of the Council has now become the English Minister of Education; and, we fear we must add, that the administration of the poor-laws now practically rests with the Home Secretary. Education, and Relief of the Poor, are the two great purposes for

which charities are now founded or maintained. Each of these ministers will find the business of his department materially affected by the manner in which the Commissioners perform their trust. An ill-judging or careless Commissioner may allow parish after parish to be pauperised by its charities. A zealous and intelligent Commissioner may materially assist in carrying out the plans of the committee of the Privy Council. A bigoted or negligent Commissioner may materially impede them. Perhaps the Chancellor, the Home Secretary, and the Lord President, might each nominate a Commissioner; but we had far rather leave this to be disposed of by a Cabinet Minute, than by Act of Parliament. We are not sure that in a matter of such importance the first commissioners ought not to be named in the act.

As to the Inspectors, they are to be the eyes and ears of the commissioners. 'They are to make such enquiry, inspection, and 'examination in such districts, as may from time to time be as- 'signed to them by the commissioners, and they are to report 'their opinion, and the grounds thereof.' On their activity and zeal, and, above all, on their discretion, will mainly depend the good working of the measure. We think it clear, therefore, that they ought to be appointed and removed by the Commissioners. The labours of the Commissioners will be great, and their responsibility anxious, under any circumstances; but both will be much increased if they have neither the power to select their own instruments; nor the power to remove them if inefficient; nor the influence which the possession of these powers confers. The number of Inspectors, too, appears to be insufficient. If each is to have a district, they must share England and Wales. The act may direct the appointment of two Inspectors, but should enable the commissioners to appoint more with the consent of the Treasury.

We now come to the Tenure by which the Commissioners are to hold. The bill, copying the former bill, enables them to hold during good behaviour; that is, for life—for who has heard during this century of a great public officer holding under good behaviour dismissed? Indolence, carelessness, ill-temper, indiscretion, vanity, intolerance, altogether, do not amount to legal misbehaviour; but any one of them would make a man an incompetent, or perhaps a mischievous, Commissioner. In an unparliamentary office like this, the only real tenure, during good behaviour, is tenure during her Majesty's pleasure. No man holding under that tenure need fear removal unless he deserve it; and the consciousness that he is subject to it will prevent his deserving it.

Having considered the principal provisions which are contained in the bill, we have now to notice some which we think that it ought to contain. No provision is made for the travelling expenses of the Commissioners or Inspectors. For the efficient performance of their functions, the commissioners, however, must frequently travel, and the inspectors must almost live on the road. If they are to bear these expenses out of their salaries, their interest will always be in opposition to their duty. Probably under the 9th section these expenses may be allowed to the inspectors by the Treasury. But this power does not extend to the commissioners. The best course would be to insert a clause for this purpose, resembling the 14th section of the 5 and 6 Vic. c. 84—the act creating the lunacy commissioners. All advertisements, appointments, and other instruments made in pursuance of the act, ought to be exempted from duty,—following the precedent of the poor-law amendment act, (4 and 5 W. IV. cap. 76, sec. 86.) These, however, are trifling omissions. But there is one of considerable importance. We have seen that, by the 53d section, the Commissioners are to report what charities have ceased to be beneficial, or have become injurious. But there the bill stops. It neither authorizes the Commissioners nor the Court of Chancery to act on such a Report. By the 19th section, indeed, when a charitable fund under £100 a-year *cannot* be applied according to the intention of the donor, the Commissioners may direct its application to any charitable purpose whatever. But if it *can* be applied, however mischievous the application may be, they can do nothing but report. We are no advocates for any undue extension of the powers of the Commissioners; but there can be little doubt, we think, that the bill ought at least to enable them to recommend, in all such cases, a new scheme for the application of the fund, and perhaps to enable the Court of Chancery to act on their recommendation. To direct abuses to be reported, and yet leave them unsusceptible of reform, is worse than a half-measure.

ART. IX.—*The Collected Writings of* WALTER SAVAGE LANDOR. *With many Additions.* Two volumes, large 8vo. London: 1846.

THERE is perhaps no writer of the present age, taken in the whole, more likely to survive and make acquaintance with another, than Mr Landor. This is often the reward of those writings which, on their first appearance, have neither been much depreciated nor much extolled; for the right balance is as apt to be lost by a sudden jerk upward, as by a stone thrown in. Mr Landor has avoided both extremes. Wisdom may have feared him as something dangerous; but Folly has avoided him as something incomprehensible. He has been left to take his solitary way; and has omitted no privilege of singularity that belonged to it. With one hand resting near the heart of Southey, he has clenched and thrust the other into the face of every God of Southey's idolatry. A writer of the extremest liberal opinions, he has desired not to be confounded 'with the Coxes and Foxes of the age.' A declared Republican, though the representative of an ancient family, he has rebuked 'the drunken democracy of 'Mr William Pitt.' But of this wayward spirit, we are bound to add, there has been much less of late than of old. The violent and capricious will has not so often run before, and committed, the masculine intellect. The phrases just now quoted, are not even preserved in this edition. And other evidence is here, of abated bitterness, of enlarged and manly tenderness, and of wisdom as generous and cordial as it is lofty and pure.

In these volumes are collected, for the first time, the entire works of this remarkable writer. Here are his Poems, both English and Latin, with many large and striking additions, (we may instance the series of *Hellenics*;) his Tragedies, his Dramatic Fragments, and a new five-act Play on the *Siege of Ancona*, (all which he modestly classes under the general title of *Acts and Scenes*,—describing them as Imaginary Conversations in Metre;) and his *Examination of Shakespeare*; his *Pentameron*; and his *Pericles and Aspasia*;—bearing, every one of them, the marks of thorough revision, and enriched, especially the *Pericles*, with innumerable new passages quite worthy of the old. Of these last-named books it is not our present intention to speak; but we cannot pass them in even this recital, without remarking that in them, more perhaps than in any other of his writings, (and eminently in the exquisite *Pentameron*, where Petrarch and Boccaccio converse; and in the *Shakespeare Examination*, where

the great poet speaks as the author of *Hamlet* and *Othello* might have spoken;) Mr Landor's genius has thoroughly subjected itself to those of his characters. Every word they utter in these books, issues out a sense of the beauty and wisdom with which they had affected the writer's soul; nor do we feel surer of the destiny of any existing works with future generations. What remains to be named of the Collection, are those famous Dialogues with which Mr Landor's name is most extensively associated.

It is twenty-two years since the *Imaginary Conversations* were noticed in this Journal. They consisted then of thirty-six Dialogues, and were comprised in two volumes. In the course of the five following years, the volumes increased to five, and the Dialogues to eighty-two. In number, without naming their enlargement and increase in other respects, the latter now amount to a hundred and twenty-five, and occupy nearly a volume and a half of this general edition; which, we may remark, is beautifully, clearly, and not too minutely printed, in the form of double columns.

Certainly no other book of Conversations, with which we are acquainted, can be said in all respects to compare with them. We do not speak merely of the 'Dialogues' between *Theron* and *Aspasio*, *Hylas* and *Philonous*, and other ideal personages;—in which writers, great and small, the Berkeleys and the Harveys, have recommended their respective systems of Metaphysics or Divinity;—but of Dialogues attributed to real people, such as those by Langhorne, Lyttelton, and Hurd. Of these, Langhorne's little book, in which Charles the Second and his Wits are speakers, is perhaps the liveliest and most in character. Lyttelton is also amusing, and not uncharacteristic. Hurd, though occasionally warmed by recollections of poetry and romance, is on the whole politely cold. If we went abroad to pursue the comparison, we should say, passing Fénélon, Paschal, and Fontenelle, that perhaps the best Dialogues *for character*, written up to the time of Mr Landor, since the time of their great European inventor, Plato, (for the Indians were before the Greek in the form, as well as in much of the matter of his reasoning,) are those in the celebrated *Cortegiano* of Raffaelle's friend, Castiglione; in which Bembo and others are the speakers. There is a good old English translation, with the title of the *Court-Gentleman*.

When this Journal formerly spoke of the *Imaginary Conversations*, it was pointed out how exquisite the discrimination of character was in many cases, and how strange and wilful the indifference to it in others: How imperfect the dramatic appreciа-

tion of the intellect of the speakers, and of the literary tone of the age, for example, in such Dialogues as those of *Hume and Horne*;—how perfect in such as *Elizabeth and Burleigh*, *Ascham and Jane Grey*, *Henry and Anne Boleyn*, *Burnet and Hardcastle*; and in all those of the Men and Women of Antiquity. We might again take up and pursue this contrast. We might show how subtle and exact the art which sets before us the colloquy of *Marvel and Parker*, of the *Emperor of China and his Minister*, of *Rochefoucault and La Fontaine*, of *Melancthon and Calvin*, of *Steele and Addison*, of *Lucian and Timotheus*; and of other and grander Voices from the graves of Greece and Rome—while we condemned, for mere wilful singularity and want of keeping, the hearty, instead of dry tone of his *Washington*; the odd eminence of his *Abbé Delille*, who, being the most talkative Frenchman on record, lets the Englishman have almost all the talk to himself; the mere self-ventriloquizing of his *Franklins*, *Southeys*, *Romillys*, *Sheridans*, *Talleyrands*, and even his *Galileos* and *Miltons*;—his well-educated language, where no such advantage could possibly have been heard of; and his high reasoning powers, where nothing of the kind existed. In one of the many additions to the old Dialogues which we observe in this Collection, there is indeed an answer attempted on the latter point. Mr Landor intimates that no one would care for his statesmen and kingly interlocutors of the inferior class, if he were to show them as they show themselves,—encrusted with all the dirtiness they contract in public life, in the debility of ignorance, in the distortion of prejudice, or in the trickery of partisanship. He reasons that, principles and ideas being his objects, they must not only be reflected from high and low, but must also be exhibited where people can see them best, and are most inclined to look at them; and he implies that if this is a blemish in his book, it is one his book would be worse without.

We doubt this. We have great faith for what is exact and true in every thing, and would for the most part leave it to tell for what it simply is. And we suspect the secret of these perverse departures from obvious character, to lie no deeper than Mr Landor's substitution of his own caprice and pleasure for all other considerations. It is very clear to us in such cases, that it is Mr Landor himself who is too plainly visible throughout, whomsoever he makes the organ of his opinions; and with all our hearty admiration of him,—we must own that in the special instances adverted to, we are obstructed and thrown back by an amount of this personal wilfulness, far from becoming such an arbiter and universalist as we otherwise gladly recognize in him. His opinions are then greatly too much at the command

of his predilections;—sometimes of his momentary humours. He has capricious enmities, and unreasonable likings. You see assent and dissent occasioned by mere regard for one speaker, and dislike for another. He runs into violent hyperboles both of praise and blame; is a great deal too fond, for a demonstrative critic, of sweeping preferences of this and that to 'all' that 'ever' was written in 'any' age or country; is apt to have more images than arguments, owing to the same exuberance of fancy; sometimes allows his robust animal spirits to swell to insolence, or to degenerate into coarseness; is often too prolix in his jokes and stories; and (to get rid as fast as we can of these objections on limited points) is too much tempted, by the nicety and exactness of his scholarship, to substitute verbal criticism for spiritual; and to tire his readers with accumulated objections to people whom the world have long ceased to make gods of.

But, these drawbacks stated, how little in reality they affect the great bulk of these Conversations. What a weighty book they make! How rich in scholarship; how correct, concise, and pure in style; how full of imagination, wit, and humour; how well informed, how bold in speculation, how various in interest, how universal in sympathy! In these hundred and twenty-five Dialogues, making allowance for every shortcoming or excess, the most familiar and the most august shapes of the Past are reanimated with vigour, grace, and beauty. Its long dead ashes rekindle suddenly their wonted fires, and again shoot up into warmth and brightness. 'Large utterances,' musical and varied voices, 'thoughts that breathe' for the world's advancement, 'words that burn' against the world's oppression, sound on throughout these lofty and earnest pages. We are in the high and goodly company of Wits and Men of Letters; of Churchmen, Lawyers, and Statesmen; of Party men, Soldiers, and Kings; of the most tender, delicate, and noble Women; and of Figures that seem this instant to have left for us the Agora or the Schools of Athens,—the Forum or the Senate of Rome. At one moment we have politicians discussing the deepest questions of state; at another, philosophers still more largely philosophizing;—poets talking of poetry, men of the world of worldly matters, Italians and French of their respective Literatures and Manners. Whether such a book obtains its meed now or hereafter, will be the least part of its writer's concern: whether it is to be read in the present age or the next, may occupy his thought no more than whether in the morning or the afternoon of the present day. When the young gentleman who fancied his acquaintance and patronage would be a comfort to Doctor

Johnson, grieved very much to think that the introduction must lie over for a little while, the Doctor remarked, in his heavy solid way, 'Why, sir, I can wait!' So can Mr Landor.

'Are you certain that in their inferences they are all quite 'sound?'—is one of the new questions, in one of the old Dialogues. 'Indeed,' is Mr Landor's candid and sufficient answer, 'I do 'not know perfectly that they are; but they will give such 'exercise in discussing them, as always tends to make other 'men's healthier.' Nothing can more truly indicate what is probably, after all, their greatest charm. Mr Landor's genius has a wonderfully suggestive quality. Even where he most offends against taste or judgment, he rarely fails to stimulate thought and reflection. Paradoxes, in him simply wilful and preposterous, will often be found to contain very profound truths for us. We may assent or we may oppose, but we must *think* when in company with him; and we shall always find ourselves the wealthier for what thought germinates within us. How much the more when, in his higher and nobler compositions, we see Suggestion drop its richest fruit in perfected and consummate Truths; and when every thought and feeling are such, as he who writes must have been the better for having entertained and uttered, and we who read are certainly the better and the happier for being permitted to partake. There are differences in the Dialogues as striking, as between the summer air on a mountain top, and the crowded atmosphere of a busy city. But the reader will make his choice according to his temper; for in both, as *Jacques* hath it, there is 'much mat-'ter to be heard and learn'd.'

Nor need he fear that his temper will be ruffled, here, by the eccentric spelling which prevailed in former editions of the *Imaginary Conversations*. In the book before us, to reverse a reproach we have heard levelled against his orthographic infidelities, Mr Landor spells like a Christian. It would be difficult to guess why, unless some friend has been at the pains to assure him that a popular appreciation of his writings had been somewhat intercepted, by a prevalent notion that he had not been taught spelling. A conversion it certainly is not. It is a mere tribute to fashion, a kind of sacrifice to ignorance; for we observe evidence in the additions to the old dialogue of *Johnson and Horne Tooke*, of even the strengthening and deepening of his orthographic heresy; and, beside these multitudinous additions, there is an entirely new Dialogue on the same subject, between the same speakers. We will quote the concluding sentences of it. It seems to us, that, under Johnson's self-

defence against his critic, the writer conceals a personal reference sufficiently free from intemperance or vanity, to be read with pleasure. There is that in it which would go far to reconcile many otherwise jarring opinions in these volumes, and justify the half-aristocratic, half-republican cast of Mr Landor's creed. He is, after all, 'more an antique Roman than a Dane;' and his democracy is rather classical than of northern growth.

Horne Tooke warns the Doctor against his prejudices, and receives this answer—

"'Prejudices I may have; for what man is without them? but mine, sir, are not such as tend to the relaxation of morals, the throwing down of distinctions, the withholding of tribute to whom tribute is due, honour to whom honour. You and your tribe are no more favourable to liberty than I am. The chief difference is, and the difference is wide indeed, that I would give the larger part of it to the most worthy, you to the most unworthy. I would exact a becoming deference from inferiors to superiors; and I would not remove my neighbour's landmark, swearing in open court that there never was any but an imaginary line between the two parties. Depend upon it, if the time should come when you gentlemen of the hustings have persuaded the populace that they may hoot down and trample on men of integrity and information, you yourself will lead an uncomfortable life, and they a restless and profitless one. No man is happier than he who, being in a humble station, is treated with affability and kindness by one in a higher. Do you believe that any opposition, any success, against this higher, can afford the same pleasure? If you do, little have you lived among the people whose cause you patronise, little know you of their character and nature. We are happy by the interchange of kind offices, and even by the expression of good-will. Heat and animosity, contest and conflict, may sharpen the wits, although they rarely do; they never strengthen the understanding, clear the perspicacity, guide the judgment, or improve the heart.'

It would be too curious a labour to indicate all the additions and interpolations to the old Dialogues that have been made in this collection. In amount, we imagine, they would form little less than a sixth or seventh of the original; yet so skilfully are they interwoven, that to track and follow them is difficult. We find them in no case, for instance, interfere with that remarkable tact in the conduct of the Dialogues, by which a singular variety of topics is always sustained in each, without undue or violent transition; or any thing more of abruptness than should characterise the freedom and strength of conversation, and convey that mingled tone of study and society, which David Hume lays down to be the master-art of this style of composition. But though we cannot describe the whole of Mr Landor's labours in this respect, we will endeavour, before we pass to those which

are here printed for the first time, to indicate some few of the principal additions to the more prominent of the old Conversations.

We observe not a few in the exquisite Dialogue intituled *Brooke and Sidney*. The stately, romantic, metaphoric tone of their friendship, as we find it in Sir Fulke Greville's (Lord Brooke) Life of Sir Philip, seems to us happily caught in what follows:—

'*Brooke.* I come again unto the woods and unto the wilds of Penshurst, whither my heart and the friend of my heart have long invited me.

'*Sidney.* Welcome, welcome! How delightful it is to see a friend after a length of absence! How delightful to chide him for that length of absence, to which we owe such delight.

'*Brooke.* I know not whether our names will be immortal; I am sure our friendship will. For names sound only upon the surface of the earth, while friendships are the purer, and the more ardent, the nearer they come to the presence of God, the sun not only of righteousness but of love. Ours never has been chipt or dimmed even here, and never shall be.

'*Sidney.* Let me take up your metaphor. Friendship is a vase which, when it is flawed by heat or violence or accident, may as well be broken at once; it can never be trusted after. The more graceful and ornamental it was, the more clearly do we discern the hopelessness of restoring it to its former state. Coarse stones, if they are fractured, may be cemented again; precious ones, never.'

There is another fine interpolation on Chivalry, and on those subtle compensations for supposed failure in this world, which fall to the lot of pure and high imaginations. It is better to suffer, reasons Philip with Brooke, than to lose the power of suffering. The life has not been idly spent, which has been mainly spent in conciliating the generous affections; and he who can bring before his death-bed even the empty image he has long, though in vain, adored, has not wholly lived in vain. The friends indulging throughout these tender, solemn, and romantic themes, Sidney fitly closes the conversation (as if he had come to it from the reading of Ariosto) with a comparison of the sound of a distant sea,—breaking heavily on the pauses of conversation, in the stillness of midnight, to what he could imagine the sound of a giant might be, who, coming back from travel to some smooth, still, and solitary place, with all his armour and all his spoils about him, casts himself down to rest.

In the Dialogue headed *Porson and Southey* there are novelties we less admire, but also some that strongly, and some that pleasantly, appeal to us. When the poet of Keswick tells us with what a delightful 'summer murmur of fostering modulation' his friend of Rydal Mount is apt to read his own verses

aloud, we can fancy few things more happily said. When he describes himself far from confident that any of us ever speak quite correctly, of those who differ from us essentially in taste, in opinion, or even in style, it seems to us well worth consideration if that be not so. Where we may even cordially wish to do it, true it is, that we are apt to lay restraint on ourselves, and to dissemble a part of our convictions. There is also a sound objection by Porson, to what we think a fallacy as to the object of criticism,—that 'the aim of an author being such or 'such, the only question is whether he has attained it.' The real matter of consideration should surely be,—not whether a foolish man has succeeded in a foolish undertaking,—but whether his production is worth any thing, and why it is, or why it is not. We like also the rough, quaint, Professorial touch, in the comparison of Crabbe and Young, where it is said that in some parts of his writings our modern Hogarth "wrote with a two-'penny nail, and scratched rough truths and rogue's facts on 'mud walls.' And all readers will admire, whether in all respects assentingly or not, the picturesque distinction which the talkers strike out between Bacon and Shakespeare.

'*Parson.* At Cambridge we rather discourse on Bacon, for we know him better. He was immeasurably a less wise man than Shakspeare, and not a wiser writer: for he knew his fellow-man only as he saw him in the street and in the court, which indeed is but a dirtier street and a narrower: Shakspeare, who also knew him there, knew him every where else, both as he was and as he might be.

'*Southey.* There is as great a difference between Shakspeare and Bacon, as between an American forest and a London timber-yard. In the timber-yard the materials are sawed, and squared, and set across: in the forest we have the natural form of the tree, all its growth, all its branches, all its leaves, all the mosses that grow about it, all the birds and insects that inhabit it; now deep shadows absorbing the whole wilderness; now bright bursting glades, with exuberant grass and flowers and fruitage; now untroubled skies; now terrific thunderstorms; every where multiformity, every where immensity.'

There is nothing Mr Landor so freely indulges (we say it to his honour) as this impassioned admiration of the greatest of poets. It breaks from him, in this revision of his writings, on all possible occasions. All that he had said of old he says afresh, enlarges it, adds to it, multiplies it fifty-fold. 'Glory 'to thee in the highest, thou confidant of our Creator!' is one of his daring but not irreverent exclamations. And this glory he seeks to render, with all his prose and with all his verse,—breaking into verse when prose fails him.

'*Delille.* And yet how enthusiastic is your admiration of Shakspeare!

'*Landor.* He lighted with his golden lamp on high
The unknown regions of the human heart,
Show'd its bright fountains, show'd its rueful wastes,
Its shoals and headlands; and a tower he raised
Refulgent, where eternal breakers roll,
For all to see, but no man to approach.'

It is curious that, in the only detraction we see made from Shakespeare in these added passages, we detect Mr Landor's only critical fallacy in reference to him. Speaking of his Clowns, he remarks that they should appear in their proper places; for that a picture by Morland or Frank Hals ought never to break a series of Frescoes by the hand of Raffaelle, or of senatorial portraits animated by the sun of Titian. But it is not the same thing. Shakespeare's rudest Clowns have a fitness in them that does not break the line of order, of grace, or of pity, in relation to which they may happen to stand. Tragedy and Beauty are theirs, when there is need of either; and, lurking underneath their jests, lie the utmost depths of feeling and reflection.

In that conversation of *Delille and Landor* the insertions are extremely numerous. Among the most striking are the comparison of Gibbon and Voltaire, some defensive allusions to Johnson's critical faculty, the account of the writer's own early studies, and a remark on the sources of satirical inspiration. Mr Landor seems to think that no good writer was ever long neglected; no great man overlooked by men equally great. Certainly impatience is some proof of inferior strength, and in some cases perhaps a destroyer of what little there may be; but the doctrine may be carried too far. And let us say that we do not go the whole of Mr Landor's lengths against the versification of Boileau. In the observation that the greater part of the heroic verses in the French language may be read with more facility as anapæstic than as iambic, we may agree without arriving at the adverse inference. The cause, in fact, proceeds from the variety of accent, and a far greater freedom of it than in English verse. In what is charged as a fault, resides what we think the tact and delicacy of this versification. The ground is iambic; and the very changes made upon it are (so to speak) *iambicized* by means of rests and pauses.

Finding ourselves on this subject, we may remark, that in one of the Dialogues now first printed, we observe some heresies on the harmony and construction of English verse; which we can only attribute to the inveterate force of Mr Landor's classical associations, and habit of referring in all cases to ancient forms. For example, he divides Milton's famous line,

'With them from bliss to the bottomless deep,'

into dactyls; making the pauses at 'from' and 'bottomless.' This is altogether wrong. The pause is at 'bliss,' and then comes an anapæst, which hurries us finely to the close. How could Mr Landor suppose that Milton would suddenly begin dancing to hell in this manner, in dactyls?

'With thĕm frŏm | blīss tŏ thĕ | bŏttŏmlĕss dēēp!

In the same mistaken way, he asks by what ingenuity we can erect into a verse another of Milton's lines—

'In the bosom of bliss, and light of light?'

We answer,—by a pause at 'bliss,' with a corresponding hurry on the words 'in the,' to warrant it, and heighten the luxury of the repose,—

'In thĕ bŏsom of bliss ——— and light of light.'

These are among the niceties of the art musical, which Mr Landor is often curiously indifferent to. He even quotes a famous chorus from *Samson Agonistes*, in proof that Milton must have 'intended' it to be inharmonious. Oh, no! The great poet had no such intention. In that kind of half-prose and half-verse, lay the *earnestness* which was meant, there, to constitute the soul of the music. Mr Landor proceeds to allude, with infinite scorn, to those writers of English verse who think it necessary, as he says, to 'shovel in the dust 'of a discord' now and then. But shovelling in the dust of a discord, is not a good metaphor; nor is good musical reasoning implied in it,—as musicians would tell Mr Landor. The use of the discord is a principle in music, and an exquisite increase of the harmony. There is not a more honied drop in music than what is technically called the 'resolution of the dis-'cord;' that is to say, the note that follows it, and which it is intended to prepare. We are reminded of the pleasing lines of Mr Leigh Hunt, which happen to be much to the purpose:

'Sorrow, to him that has a true-touch'd ear,
Is but the discord of a warbling sphere;
A lurking contrast, which, though harsh it be,
Distils the next note more deliciously.'

Now, since Mr Landor, through the coarse mouth of his friend Porson, accuses the Scotch in particular, in one of these interpolated passages of the conversation with Southey, of a 'scabby and frostbitten ear for harmony,' we think that we may fairly leave the reader to judge whether we might not pay back the compliment. He instances in the same Dialogue, for see-saw sameness, the celebrated lines in *Douglas*, 'This is the 'place—the centre of the grove,' &c. We do not care greatly for these verses, though we should somewhat reluctantly sur-

reader a certain schoolboy fondness for them; but we may remind Mr Landor of cases where this sameness may be even not a little desirable and impressive—as where the intention is to enforce the idea of calmness or firmness. At any rate, we have shown that he does not prove himself in possession of the right to advance that national reproach. To adopt an illustration of his own: there are some who, in a few years, can learn all the harmony of Allan Ramsay or Burns; but there are others who must go into another state of existence for this felicity. We leave the subject with one example more. He tells us that no authority will reconcile him to roll-calls of proper names; and then he quotes in proof a line from Milton, which surely, even for the repetition of the accents, is most lovely:

'Launcelot, or Pellas, or Pellenore.'

We do not, however, on this or any other subject, remain long out of temper with Mr Landor. A noble thought, a generous fancy, sets all to rights again. We observe a beautiful insertion in one of the finest of all the Conversations, (that of *Cicero* with his brother *Quinctus* the night before his death,) upon the nature of worldly Enmities. They are excited, it is said, by an indistinct view; they would always be allayed by conference. 'Look 'at any long avenue of trees by which the traveller on our prin-'cipal highways is protected from the sun. Those at the be-'ginning are wide apart; but those at the end almost meet. 'Thus happens it frequently in opinions.' And thus happens it with the writer himself;—that he has come nearer and nearer, in the course of life, to men from whom at its outset he was far asunder;—having had strength enough to quell, or good sense to temper and assuage, not a few of his earlier animosities. In these classical Dialogues we see many instances. In the additions to *Eubulides and Demosthenes*, to *Anacreon and Polycrates*, and, above all, to the divine *Epicurus, Leontius, and Ternissa*;—the last perhaps the masterpiece of all. It is the duty of the cheerful philosopher (and it is delightfully discharged) to show how polemics serve Men ill, and the Gods no better; how they mar what is solid in earthly bliss, by animosities and dissensions; and intercept the span of azure to which the weary and the sorrowful would look up. Exceptions, nevertheless, there are. Matters are retained in many of the Dialogues we could wish to have been dispensed with; arguments enlarged that would have borne compression; and declamations reiterated which force from us the unavoidable *Cui Bono?* 'There are 'nations, it is reported, which aim their arrows and javelins at

'the sun and moon, on occasions of eclipse or any other offence; 'but I never have heard that the sun and moon abated their 'course through the heavens for it, or looked more angrily when 'they issued forth again to shed light on their antagonists. 'They went onward all the while in their own serenity and 'clearness, through unobstructed paths, without diminution and 'without delay. It was only the little world below that was in 'darkness.' Some enthusiasts might even apply this image to Mr Landor's continued assaults on Plato. In this direction, certainly, he abates none of his old animosities. There is no Conversation more enlarged than that of *Diogenes and Plato*; and never flew from Tub to Porch so many, such glittering, and such deadly missiles, in rapid and incessant fire. The Cynic protests himself no weaver of fine words; no dealer in the plumes of phraseology; and in all the while covering his stately victim with copious imaginative garlands, at once beauteous and most deadly. Never did ragged beard so carry it against pumiced face and perfumed hair. Mr Landor swells out the Sinopean, till the Athenian shrinks into nothing. The ample, puffed, versi-coloured, cloudlike vestiary of Plato, dwindles to a rag;—the short, strait, shroudbase, chinky cloak of Diogenes, becomes a dominant and imperial vesture.

Mr Landor, in short, likes a practical, better than a poetical philosophy. He wants positive, useful, available results. The difference between such reasoners as Plato and Bacon, to him, is the difference between a pliant luxuriant twig, waving backward and forward on the summit of a tree; and a sound, stiff, well-seasoned walking-stick, with a ferule that sticks as far as is needful into the ground, and makes every step secure. He thinks that philosophy should not say things to make people stare and wonder; but things to withhold them hereafter from staring and wondering;—that she should pave the streets, and not the clouds. In a word, he puts aside all the commentary which our German friends have for the last quarter of a century been making upon the Greek; and declares that he recognises no higher aim in a philosopher than to make remote things tangible; common things extensively useful; useful things extensively common; and to leave the least necessary for the last. But he is little likely to force unanimity on this point; and, as long as disagreement exists, there will be submission to the genius of Plato, and a veneration which will not subside at even Mr Landor's eloquent voice.

'Grandiloquent and sonorous, his (Plato's) lungs seem to play the better for the absence of the heart. His imagination is the most conspicuous, buoyed up by swelling billows over unsounded depths. There are his mild thunders, there are his glowing clouds, his traversing coruscations,

and his shooting stars. More of true wisdom, more of trustworthy manliness, more of promptitude and power to keep you steady and straightforward on the perilous road of life, may be found in the little manual of Epictetus, which I could write in the palm of my left hand, than there is in all the rolling and redundant volumes of this mighty Rhetorician, which you may begin to transcribe on the summit of the great Pyramid, carry down over the Sphynx at the bottom, and continue on the sands half-way to Memphis.'

We can afford but a few lines more to this revision of the Old Conversations. The notices of Italian life and manners in *Leopold and President du Paty*, receive large additions. This is one of those Dialogues which have contributed much to our knowledge of the beautiful country in which Mr Landor resided many years. He is as intimate with it as a native, and loves it well; but not a fault of its government or religion escapes him; and, Cosmopolite as he is, he is most emphatically, on these subjects, an Englishman also. He never subserved an over-fear or an over-admiration of Napoleon. He will not suffer French bullyings in Tahiti or in Algeria to pass undenounced or underided. And whatever praise or blame he gives in this direction, is ratified with the downright echo of a doubled-up English fist. He has, withal, a salutary hatred of war: he would be strong, but only to keep down that foul abuse and wicked absurdity, which cry havoc against the weakness of nations. It is a shrewd remark we find thrown out in one of these passages, that the French have always undervalued the English, since the English conquered and rendered them tributary; and that the Englishman has always looked up to the Frenchman, since he threw the Frenchman down and tied his wrists behind him. We are glad to observe, at the same time, that, in moderation, Mr Landor can 'look up' too; and that not a few old anti-Gallican caprices are visible in his Dialogues no longer. It is true that, when we are displeased with any thing, we are unable to confine the displeasure to one spot; and are apt to dislike every thing a little when we dislike any thing much; but, even in relation to French Tragedy, Mr Landor so far conquers his displeasure as to make some agreeable admissions. He has found in it, he says, (speaking in his own person,) some of the finest didactic poetry in the world; 'peculiarly adapted both to direct the reason and 'to control the passions;' and he compares their Drama to a well-lighted saloon of graceful eloquence, 'where the sword-knot 'is appended by the hand of Beauty, and where the snuff-box is 'composed of such brilliants as, after a peace or treaty, Kings 'bestow on Diplomatists.' There is also, in the dialogue of *Rousseau and Malesherbes*—among additions worthy of the ex-

quisite original—a fine piece of just and proud eloquence put into the mouth of the Genevan; to the effect that, while others cling to a city, to a faction, to a family, the French, in all their fortunes, cling to France. The remarks on Montesquieu, in the same insertion, are inimitable. In connexion with it we may name, too, several happy touches in the charming Conversation of *Bossuet and the Duchess of Fontanges;* and when we have added, of the remaining Dialogues, that the most striking and large insertions will be found in those of *Barrow and Newton, Landor and Visitors, James the First and Isaac Casaubon,* and of *Peterborough and Penn* (in the last most especially,) we may—first quoting from these passages a few disconnected thoughts we find it difficult to pass—proceed to mention briefly the *New Conversations.*

'Your former conversation has made me think repeatedly what a number of beautiful words there are of which we never think of estimating the value, as there are of blessings. How carelessly, for example, do we (not we, but people) say, "I am delighted to *hear from you.*" No other language has this beautiful expression, which, like some of the most lovely flowers, loses its charms for want of close inspection. When I consider the deep sense of these very simple and very common words, I seem to hear a voice coming from afar through the air, breathed forth, and entrusted to the care of the elements, for the nature of my sympathy.'

'The Arts cannot long exist without the advent of Freedom. From every new excavation whence a statue rises, there rises simultaneously a bright vision of the age that produced it; a strong desire to bring it back again; a throbbing love, an inflaming regret, a resolute despair, beautiful as Hope herself: and Hope comes too behind.'

'How refreshing, how delicious, is a draught of pure home-drawn English, from a spring a little sheltered and shaded, but not entangled in the path to it, by antiquity!'

'It is no uncommon thing to hear, "*He has humour rather than wit.*" Here the expression can only mean *pleasantry:* for whoever has humour has wit; although it does not follow that whoever has wit has humour. Humour is wit appertaining to character, and indulges in breadth of drollery, rather than in play and brilliancy of point. Wit vibrates and spirts; humour springs up exuberantly as from a fountain, and runs on. In Congreve you wonder what he will say next: in Addison you repose on what is said, listening with assured expectation of something congenial and pertinent. The French have little humour, because they have little character: they excel all nations in wit because of their levity and sharpness. The personages on their theatre are generic.'

'We not only owe our birth to women, but also the better part of our education; and if we were not divided after their first lessons, we should continue to live in a widening circle of brothers and sisters all our lives. After our infancy and removal from home, the use of the rod is the principal thing we learn of our alien preceptors; and, catching their dictatorial language, we soon begin to exercise their instrument of enforcing it, and swing it right and left, even after we are paralysed by age, and until Death's hand strikes it out of ours.'

'Shame upon historians and pedagogues for exciting the worst passions of youth by the display of false glories! If your religion hath any truth or influence, her professors will extinguish the promontory lights, which only allure to breakers. They will be assiduous in teaching the young and ardent that great abilities do not constitute great men, without the right and unremitting application of them; and that, in the sight of Humanity and Wisdom, it is better to erect one cottage than to demolish a hundred cities. Down to the present day we have been taught little else than falsehood. We have been told to do this thing and that; we have been told we shall be punished unless we do; but at the same time we are shown by the finger that prosperity and glory, and the esteem of all about us, rest upon other and very different foundations. Now, do the ears or the eyes seduce the most easily, and lead the most directly to the heart? But both eyes and ears are won over, and alike are persuaded to corrupt us.'

The Conversations which have not before been *collected*, are in number forty-four; but of these, twenty have been *printed*, chiefly in periodical publications. The remaining twenty-four are now given to the world for the first time. We can only briefly speak of them, as we have said; but they show, in undiminished force and vivacity, every characteristic of Mr Landor's genius. Any writer might have built, upon these compositions alone, an enduring reputation. The same beauties and the same faults recur; but the latter in diminished intensity. They have matter as various, and character as opposite and enlivening;—as much to occupy the intellect of the thoughtful, and as much to satisfy the imagination of the lively. They form an after-course, in short, worthy of the original banquet;—spread with the same solid viands, the same delicate rarities, and sparkling wines; the like vases of burnished gold on the board, the like statues of antique marble gracing the chamber;—but the very richness of the vases showing dark to imperfect vision, and the pure Greek on the plinths of the marble not easy to common appreciation.

Four of these new Dialogues seem to us to stand out preeminently from the rest. These are *Lucian and Timotheus*, *Marvel and Parker*, *Emperor of China and his Minister*, and

Melancthon and Calvin. In these the dramatic tone is as perfect as every other quality in the composition; and we may doubt if, in any other equal portion of Mr Landor's writings, there will be found so much beauty and fitness, so much point and gusto, so much condensation and strength. We have heard his friend Southey characterize his style, as uniting the poignancy of Champagne to the body of old English October; and nowhere, assuredly, but in Bacon or in Jeremy Taylor, do we find Prose-Poetry to compare with his,—in weight and brilliancy, or in wonderful suggestiveness. What Lucian says of Aristotle in the latter respect, we may apply to him. Whenever he presents to his readers one full-blown thought, there are several buds about it which are to open in the cool of the study. He makes us learn even more than he teaches. Without hesitation we say of these four Dialogues, and eminently of that between *Marvel and Parker*, that they contain a subtle discrimination of character, and passages of feeling and philosophy, pathetic, lofty, and profound, which we should not know where to equal in any living writer, and in very few of those who are immortal.

The idea of the *Emperor of China and his Minister* is not taken from either Montesquieu or Goldsmith. The aim is different; and would have delighted the author of *Candide*. The Emperor has heard and seen so much evil of the Jesuits, who had penetrated into his dominions, that he conceives an idea of Christians as the most quarrelsome and irreconcilable of all men; and, resolving to introduce a few of their first-rate zealots to sow divisions and animosities among the Tartars, dispatches his Minister to Europe for that purpose. But the voyage being tedious, Tsing-Ti, uninfluenced by the prejudices of his master, is able in the course of it to make himself thoroughly master of the Bible; and when he lands in London, resolves, by way of being in the fashion, to shape his conduct entirely by its precepts. He fears, indeed, that he cannot go the whole length of the commandment to cut off his right hand if it offend him; but he will try to do his best. With what success the reader may here perceive, in a passage written in the best style of Voltaire.

'I myself did not aim precipitately at this perfection, but in order to be well received in the country. I greatly wished the favour of a blow on the right cheek. Unfortunately I got several on the left before I succeeded. At last I was so happy as to make the acquisition of a most hearty cuff under the socket of the right eye, giving me all those vague colours which we Chinese reduce into regular features, or into strange postures of the body, by means of glasses. As soon as I knew positively whether my head was remaining on my neck or not, I turned my left cheek for the testimony of my faith. The assailant cursed me and kicked me;

the byestanders, instead of calling me Christian, called me Turk and Malay; and, instead of humble and modest, the most impudent dog and devil they had ever set eyes upon. I fell on my knees and praised God, since at last I had been admitted into so pure and pious a country, that even this action was deemed arrogant and immodest.'

In short, poor Tsing-Ti finds Christianity to be every where known and confessed as so excellent, undeniable, and divine a thing, that no man needs to practise it at all. Indeed a man is not permitted at once to be a Christian, and to call himself so. 'He may take what division he likes; he may practise the 'ordinances of Christ without assuming the name, or he may 'assume the name on condition that he abstain from the ordinances.' A series of remarkable experiences, as wisely as amusingly detailed, settles this conclusion in the Minister's mind, and he returns to his imperial Master to lay both at his feet. But his Master cannot credit what he is told. He is especially incredulous as to what Tsing-Ti tells him of the Ministers of Christianity. He is sadly afraid that *he has purposely set his face against the Priests, for no better reason than because he could not find his favourite Christianity among them.* The Minister, nevertheless, sticks to his point; and continues to astound his Majesty by new revelations from his budget.

'TSING-TI. A priest of the first order, on which it is not incumbent either to preach or sing, either to pray or curse, receives an emolument of which the amount is greater than the consolidated pay of a thousand soldiers, composing the king's body-guard.—EMPEROR. Did they tell thee this?—TSING-TI. They did.—EMPEROR. And dost thou believe it?—TSING-TI. I do.—EMPEROR. Then, Tsing-Ti, thou hast belief enough for both of us.'

The end of it is, that the Emperor and the Minister are fain to compound their differences, by falling back upon a hearty agreement of admiration for their own native teacher, Confucius. Beautifully says the Emperor, and wisely as beautifully:

'My children will disdain to persecute even the persecutor, but will blow away both his fury and his fraudulence. The philosopher whom my house respects and venerates, Kong-Fu-Tsi, is never misunderstood by the attentive student of his doctrines; there is no contradiction in them, no exaction of impossibilities, nothing above our nature, nothing below it. The most vehement of his exhortations is to industry and concord, the severest of his denunciations is against the self-tormentor, vice. He entreats us to give justice and kindness a fair trial, as conductresses to happiness, and only to abandon them when they play us false. He assures us that every hour of our existence is favourable to the sowing or the gathering of some fruit; and that sleep and repose are salutary repasts, to be enjoyed at stated times, and not to be long indulged nor frequently repeated. He is too honourable to hold out bribes, too gentle

to hold out threats; he says only, 'satisfy your conscience; and you will satisfy your God.' But antecedently to the satisfaction of this conscience, he takes care to look into it minutely, to see that it hangs commodiously and lightly on the breast, that all its parts be sound, and all its contents in order, that it be not contracted, nor covered with cobwebs, nor crawled over with centipedes and tarantulas.'

The Dialogue of *Melancthon and Calvin* follows, as a set-off to that of the *Emperor and his Minister*. No disputable sacred doctrine but is interpreted by Melancthon in favour of the culprit. 'Such is man; the benevolent judge is God.' No fierce invocation by Calvin that is not turned to charity and peace. Thus may that weapon, so tremendous when, in the hands of the Frenchman, wielded by man against man—the 'arm of the gos-'pel'—be endowed in those of the milder German, like the fabled spear of old mythology, with the faculty of healing the saddest wound its most violent wielder can inflict. Such is the lesson taught in this beautiful dialogue.

'We fancy,' says Melancthon—'that all our inflictions are sent us directly and immediately from above: sometimes we think it in piety and contrition, but oftener in moroseness and discontent. It would, however, be well if we attempted to trace the causes of them. We should probably find their origin in some region of the heart which we never had well explored, or in which we had secretly deposited our worst indulgences. The clouds that intercept the heavens from us, come not from the heavens, but from the earth.'

The conversation closes thus. In the idea of the profound Novalis, that the true Shekinah is man, lay the thought that had possessed Melancthon.

'MELANCTHON. Calvin! I beseech you, do you who guide and govern so many, do you (whatever others may) spare your brethren. Doubtful as I am of lighter texts, blown backward and forward at the opening of opposite windows, I am convinced and certain of one grand immovable verity. It sounds strange; it sounds contradictory.—CALVIN. I am curious to hear it.—MELANCTHON. You shall. This is the tenet. There is nothing on earth divine beside humanity.'

In a section of *Lucian and Timotheus* the same subject is pursued. Timotheus, one of the leaders of the early Christians, goes and proposes to his cousin Lucian, that they should lay their heads together and compose 'a merry dialogue on the 'Priests of Isis.' But the Priests of Isis had been with Lucian just before, to propose a merry dialogue on the new sect of Christians. And between the two claimants for his scourge, stands the great Greek satirist and philosopher; witty, sarcastic, eloquent, and most impartially observant. Though less than a century had passed since the death of the Divine Founder of

Christianity, the thorny and bitter aloe of dissension was at this time in full flower, on the steps of the Christian temples;—and Lucian has no mercy for those who have tended and cherished it. He is not, at the same time, without grave errors of his own, in the direction of doubt and infidelity;—so much was needful to the portrait;—but in his reverent admiration for the character of Christ, and in his warnings and denunciations of the evil that will result from every practical denial of his doctrines, there is matter of thought and agreement for all Christian minds. It is to no purpose his cousin accuses him of turning into ridicule the true and holy. In other words, he answers, to turn myself into a fool. 'He who brings ridicule to bear against truth, finds in 'his hand a blade without a hilt. The most sparkling and pointed 'flame of wit flickers and expires against the incombustible walls 'of her sanctuary.' It is in vain Timotheus fortifies himself with Plato: Lucian, without more ado, undertakes to demolish Plato. And, with whatever success we may think this attempted, the peculiarity and boldness of our daring Swift, of Samosata, is certainly inimitably caught. There is nothing too high or too low for his humour and eloquence. Into the thrice-armed breasts of priests and philosophers, of conquerors, statesmen, and grammarians, he shoots his poisoned arrows. We might object to a want of occasional verisimilitude in the style;—but if, beside all fair allowance of lightness and buffoonery, we have sentences majestically sedate as those of Plato himself; a gloomy concentration and grandeur that Tacitus could hardly have excelled; and even evidence, here and there, as though the low-born lover of Aristophanes had been loitering half his life in the Pœcile with the Tragedians;—it is, perhaps, hardly considerate to make this an objection! Here are a few brief extracts, by which the reader may judge for himself.

'Timotheus. Cousin Lucian! cousin Lucian! the name of Plato will be durable as that of Sesostris.—Lucian. So will the pebbles and bricks which gangs of slaves erected into a pyramid. I do not hold Sesostris in much higher estimation than those quieter lumps of matter. They, O Timotheus! who survive the wreck of ages, are by no means, as a body, the worthiest of our admiration. It is in these wrecks, as in those at sea, the best things are not always saved. Hencoops and empty barrels bob upon the surface, under a serene and smiling sky, when the graven or depicted images of the Gods are scattered on invisible rocks, and when those who most resembled them in knowledge and beneficence are devoured by cold monsters below.'

'An honest man may fairly scoff at all philosophies and religions which are proud, ambitious, intemperate, and contradictory. It is the

business of the philosophical to seek truth: it is the office of the religious to worship her. The falsehood that the tongue commits is slight in comparison with what is conceived by the heart, and executed by the whole man, throughout life. If, professing love and charity to the human race at large, I quarrel day after day with my next neighbour; if, professing that the rich can never see God, I spend in the luxuries of my household a talent monthly; if, professing to place so much confidence in his word, that, in regard to worldly weal, I need take no care for to-morrow, I accumulate stores even beyond what would be necessary, though I quite distrusted both his providence and his veracity; if, professing that "he who giveth to the poor lendeth to the Lord," I question the Lord's security, and haggle with him about the amount of the loan; if, professing that I am their steward, I keep ninety-nine parts in the hundred as the emolument of my stewardship,—how, when God hates liars and punishes defrauders, shall I, and other such thieves and hypocrites, fare hereafter?'

'Scarcely ever has there been a politician, in any free state, without much falsehood and duplicity. I have named the most illustrious exceptions. Slender and irregular lines of a darker colour run along the bright blade that decides the fate of nations, and may indeed be necessary to the perfection of its temper. The great warrior has usually his darker lines of character, necessary (it may be) to constitute his greatness. No two men possess the same quantity of the same virtues, if they have many or much. We want some which do not far overstep us, and which we may follow with the hope of reaching; we want others to elevate, and others to defend us. The order of things would be less beautiful without this variety. Without the ebb and flow of our passions, but guided and moderated by a beneficent light above, the ocean of life would stagnate; and zeal, devotion, eloquence, would become dead carcases, collapsing and wasting on unprofitable sands. The vices of some men cause the virtues of others, as corruption is the parent of fertility.'

'On words, on quibbles, if you please to call distinctions so, rest the axis of the intellectual world. A winged word hath stuck ineradicably in a million hearts, and inveigled every hour throughout their hard pulsation. On a winged word hath hung the destiny of nations. On a winged word hath human wisdom been willing to cast the immortal soul, and to leave it dependent for all its future happiness. It is because a word is unsusceptible of explanation, or because they who employed it were impatient of any, that enormous evils have prevailed, not only against our common sense, but against our common humanity.'

'A great poet in the hours of his idleness may indulge in allegory; but the highest poetical character will never rest on so unsubstantial a foundation. The poet must take man from God's hands, must look into every fibre of his heart and brain, must be able to take the magnificent work to pieces, and to reconstruct it. When this labour is completed, let him throw himself composedly on the earth, and care little how many of its ephemeral insects creep over him.'

'While I admired, with a species of awe such as not Homer himself ever impressed me with, the majesty and sanctimony of Livy, I have been informed by learned Romans that in the structure of his sentences he is often inharmonious, and sometimes uncouth. I can imagine such uncouthness in the Goddess of battles, confident of power and victory, when part of her hair is waving round the helmet, loosened by the rapidity of her descent, or the vibration of her spear.'

We must take the same course with *Marvel and Parker.* The reader will have to judge of the house, by a brick or two taken from its walls. The character and position of the speakers,—the Wit and the Church dignitary,—are the same as in the Greek dialogue; but the objects of discussion have changed with the lapse of ages. The talk is here of Milton, and of the danger and darkness that encompass him; of the great Deeds and Thoughts that have just been replaced in England by trickery and falsehood; of the transitory glories of worldly power, and of the eternal claims of Genius. They who know any thing of the writings of Marvel, the delightful wit and incorruptible patriot, will know what he has himself said of an accidental meeting with Parker, at the house of Milton, in Burnhill Row; and how they afterwards walked and wandered up and down Moor-Fields, 'astrologizing upon the duration of his Majesty's 'Government.' They will remember, too, that Marvel accuses the Bishop of 'frequenting John Milton's incessantly;' of inhumanely and inhospitably insulting over his old age; and of being no better than a Judas, that crept into all companies, to jeer, trepan, and betray them. Upon this foundation the Dialogue is built; and we think it Mr Landor's masterpiece. It has, in greatest abundance, the greatest qualities of his writing; and is more consistently sustained, at a higher level, and with fewer drawbacks, than perhaps any other of all these *Imaginary Conversations.* What extracts we are able to give, may not perfectly show this; but we do not doubt that they will make the reader anxious to endeavour to ascertain it for himself.

'PARKER. Both Mr Shakspeare and Mr Milton have considerable merit in their respective ways; but both surely are unequal. Is it not so, Mr Marvel?—MARVEL. Under the highest of their immeasurable Alps, all is not valley and verdure: in some places there are frothy cataracts, there are the fruitless beds of noisy torrents, and there are dull and hollow glaciers. He must be a bad writer, or however a very indifferent one, in whom there are no inequalities. The plants of such table-land are diminutive, and never worth gathering. What would you think of a man's eyes to which all things appear of the same magnitude and of the same elevation? You must think nearly so of a writer who makes as much of small things as of great. The vigorous mind has moun-

taine to climb and valleys to repose in. Is there any sea without its shoals? On that which the poet navigates, he rises intrepidly as the waves rise round him, and sits composedly as they subside.'

'I have often been amused at thinking in what estimation the greatest of mankind were holden by their contemporaries. Not even the most sagacious and prudent one could discover much of them, or could prognosticate their future course in the infinity of space! Men like ourselves are permitted to stand near, and indeed in the very presence of Milton. What do they see? Dark clothes, grey hair, and sightless eyes. Other men have better things: other men, therefore, are nobler. The stars themselves are only bright by distance: go close, and all is earthy. But vapours illuminate these. From the breath and from the countenance of God comes light on worlds higher than they: worlds to which he has given the forms and names of Shakspeare and of Milton.'

'Who, whether among the graver or less grave, is just to woman? There may be moments when the beloved tells us, and tells us truly, that we are dearer to her than life. Is not this enough?—Is it not above all merit? Yet, if ever the ardour of her enthusiasm subsides—if her love ever loses, later in the day, the spirit and vivacity of its early dawn—if between the sigh and the blush an interval is perceptible—if the arm mistakes the chair for the shoulder—what an outcry is there!—what a proclamation of her injustice and her inconstancy!—what an alternation of shrinking and spurning at the coldness of her heart! Do we ask within if our own has retained all its ancient loyalty, all its own warmth, and all that was poured into it? Often the true lover has little of true love compared with what he has undeservedly received and unreasonably exacts.'

'But let it also be remembered, that marriage is the metempsychosis of women; that it turns them into different creatures from what they were before. Liveliness in the girl may have been mistaken for good temper; the little pervicacity which at first is attractively provoking, at last provokes without its attractiveness; negligence of order and propriety, of duties and civilities, long endured, often deprecated, ceases to be tolerable, when children grow up and are in danger of following the example. It often happens, that if a man unhappy in the married state were to disclose the manifold causes of his uneasiness, they would be found, by those who were beyond their influence, to be of such a nature as rather to excite derision than sympathy. The waters of bitterness do not fall on his head in a cataract, but through a colander—one, however, like the vases of the Danaides, perforated only for replenishment. We know scarcely the vestibule of a house of which we fancy we have penetrated into all the corners. We know not how grievously a man may have suffered, long before the calumnies of the world befel him, as he reluctantly left his house-door. There are women from whom incessant tears of anger swell forth at imaginary wrongs; but of contrition for their own delinquencies, not one.'

'MARVEL. We are captivated by no charms of description in the histories of Guicciardini or Machiavelli; we are detained by no peculiarities of character; we hear a clamorous scuffle in the street, and we close the door. How different the historians of antiquity! We read Sallust, and always are incited by the desire of reading on, although we are surrounded by conspirators and barbarians; we read Livy, until we imagine we are standing in an august pantheon, covered with altars and standards, over which are the four fatal letters* that spell-bound all mankind. We step forth again among the modern Italians; here we find plenty of rogues, plenty of receipts for making more; and little else. In the best passages we come upon a crowd of dark reflections, which scarcely a glimmer of glory pierces through; and we stare at the tenuity of the spectres, but never at their altitude. Give me the poetical mind, the mind poetical in all things; give me the poetical heart, the heart of hope and confidence, that beats the more strongly and resolutely under the good thrown down, and raises up fabric after fabric on the same foundation.—PARKER. At your time of life, Mr Marvel?—MARVEL. At mine, my lord Bishop! *I have lived with Milton.* Such creative and redeeming spirits are like kindly and renovating Nature. Volcano comes after volcano, yet covereth she with herbage and foliage, with vine and olive, and with whatever else refreshes and gladdens her, the Earth that has been gasping under the exhaustion of her throes.'

'Little men in lofty places, who throw long shadows, because our sun is setting.'—(*Marvel's definition of the statesman of his time.*)

'I have usually found, that those who make faults of foibles, and crimes of faults, have within themselves an impulse toward worse; and give ready way to such impulse whenever they can, secretly or safely. There is a gravity which is not austere nor captious, which belongs not to melancholy, nor dwells in contraction of heart, but arises from tenderness and hangs upon reflection.'

'Usually men, in distributing fame, do as old maids and old misers do; they give every thing to those who want nothing. In literature, often a man's solitude, and oftener his magnitude, disinclines us from helping him if we find him down. We are fonder of warming our hands at a fire already in a blaze than of blowing one.'

'I know that Milton, and every other great poet, must be religious; for there is nothing so godlike as a love of order, with a power of bringing great things into it.'

'PARKER. When I ride or walk, I never carry loose money about me, lest, through an inconsiderate benevolence, I be tempted in some such

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manner to misapply it. To be robbed, would give me as little or less concern.—MARVEL. A man's self is often his worst robber. He steals from his own bosom and heart what God has there deposited, and he hides it out of his way, as dogs and foxes do with bones. But the robberies we commit on the body of our superfluities, and store up in vacant places, in places of poverty and sorrow, these, whether in the dark or in the daylight, leave us neither in nakedness nor in fear, are marked by no burning-iron of conscience, are followed by no scourge of reproach; they never deflower prosperity, they never distemper sleep.'

'I do not like to hear a man cry out with pain; but I would rather hear one than twenty. Sorrow is the growth of all seasons; we had much, however, to relieve it. Never did our England, since she first emerged from the ocean, rise so high above surrounding nations. The rivalry of Holland, the pride of Spain, the insolence of France, were thrust back by one finger each; yet those countries were then more powerful than they had ever been. The sword of Cromwell was preceded by the mace of Milton—by that mace which, when Oliver had rendered his account, opened to our contemplation the garden-gate of Paradise. And there were some around not unworthy to enter with him. In the compass of sixteen centuries, you will not number on the whole earth so many wise and admirable men as you could have found united in that single day, when England showed her true magnitude, and solved the question, *Which is most, one or a million?* There were giants in those days; but giants who feared God, and not who fought against him.'—(*Marvel describing the days of the English Commonwealth.*)

PARKER. Our children may expect from Lord Clarendon a fair account of the prime movers in the late disturbances.—MARVEL. He knew but one party, and saw it only in its gala suit. He despises those whom he left on the old fitter; and he fancies that all who have not risen want the ability to rise. No doubt, he will speak unfavourably of those whom I most esteem: be it so: if their lives and writings do not controvert him, they are unworthy of my defence. Were I upon terms of intimacy with him, I would render him a service, by sending him the best translations, from Greek and Latin authors, of maxims left us by the wisest men; maxims which my friends held longer than their fortunes, and dearer than their lives. And are the vapours of such quagmires as Clarendon to overcast the luminaries of mankind? Should a Hyde lift up, I will not say his hand, I will not say his voice, should he lift up his eyes, against a Milton?—PARKER. Mr Milton would have benefited the world much more by coming into its little humours, and by complying with it cheerfully.—MARVEL. As the needle turns away from the rising sun, from the meridian, from the occidental, from regions of fragrancy and gold and gems, and moves with unerring impulse to the frosts and deserts of the north, so Milton and some few others, in politics, philosophy, and religion, walk through the busy multitude, wave aside the importunate trader, and, after a momentary oscillation from ex-

ternal agency, are found in the twilight and in the storm, pointing with certain index to the pole-star of immutable truth.'

'PARKER. We are all of us dust and ashes.—MARVEL. True, my lord! but in some we recognise the dust of gold and the ashes of the phœnix; in others the dust of the gateway and the ashes of turf and stubble. With the greatest rulers upon earth, head and crown drop together, and are overlooked. It is true, we read of them in history; but we also read in history of crocodiles and hyænas. With great writers, whether in poetry or prose, what falls away is scarcely more or other than a vesture. The features of the man are imprinted on his works; and more lamps burn over them, and more religiously, than are lighted in temples or churches. Milton, and men like him, bring their own incense, kindle it with their own fire, and leave it unconsumed and unconsumable; and their music, by day and by night, swells along a vault commensurate with the vault of heaven.—PARKER. Mr Marvel, I am admiring the extremely fine lace of your cravat.'

'PARKER. Let us piously hope, Mr Marvel, that God, in his good time, may turn Mr Milton from the error of his ways, and incline his heart to repentance, and that so he may finally be prepared for death.—MARVEL. The wicked can never be prepared for it, the good always are. What is the preparation which so many ruffled wrists point out? To gabble over prayer and praise, and confession and contrition. My lord! Heaven is not to be won by short hard work at the last, as some of us take a degree at the university, after much irregularity and negligence. I prefer a steady pace from the outset to the end, coming in cool, and dismounting quietly. Instead of which, I have known many old playfellows of the devil spring up suddenly from their beds, and strike at him treacherously; while he, without a cuff, laughed and made grimaces in the corner of the room.'

'I am confident that Milton is heedless of how little weight he is held by those who are of none; and that he never looks toward those somewhat more eminent, between whom and himself there have crept the waters of oblivion. As the pearl ripens in the obscurity of its shell, so ripens in the tomb all the fame that is truly precious. In fame he will be happier than in friendship. Were it possible that one among the faithful of the angels could have suffered wounds and dissolution in his conflict with the false, I should scarcely feel greater awe at discovering on some bleak mountain the bones of this our mighty defender, once shining in celestial panoply, once glowing at the trumpet-blast of God, but not proof against the desperate and the damned, than I have felt at entering the humble abode of Milton, whose spirit already reaches heaven, yet whose corporeal frame hath no quiet or safe resting-place here below. And shall not I, who loved him early, have the lonely and sad privilege

to love him still? or shall fidelity to power be a virtue, and fidelity to tribulation an offence?'

'PARKER. The nation in general thanks him little for what he has been doing.—MARVEL. Men who have been unsparing of their wisdom, like ladies who have been unfrugal of their favours, are abandoned by those who owe most to them, and hated or slighted by the rest. I wish beauty in her lost estate had consolations like genius.—PARKER. Fie, fie, Mr Marvel! Consolations for frailty!—MARVEL. What wants them more? The reed is cut down, and seldom does the sickle wound the hand that cuts it. There it lies, trampled on, withered, and soon to be blown away.'

We cannot leave Mr Landor at a more auspicious time than when these lofty strains of wisdom and humanity are lingering around us. The author and outpourer of such, stands apart from ordinary writers, and will be known, esteemed, and listened to, when all the rubbish of light and fashionable reading, which has so choked up our generation, shall have passed away. He has himself somewhere finely said, that the voice comes deepest from the sepulchre, and a great name has its root in the dead body. He is doubtless, for himself, well content to obey that law. But this Collection of his Writings has reminded us, for our own part, not to wait until 'deaf the praised ear, and 'mute the tuneful tongue.' Others, let us hope, will follow our example. And thus, while Mr Landor yet lives, he may hear what is violent and brief in his writings forgiven—what is wise, tranquil, and continuous, gratefully accepted—and may know that he has not vainly striven for those high rewards which he has so frequently and fully challenged. 'Fame, they tell you, is air; but without air there is no life for any—without fame there is none for the best.'

ART. X.—*An Essay on the Government of Dependencies.* By GEORGE CORNEWALL LEWIS, Esq. 8vo. London: 1841.

GOVERNMENTS are subject to many cross divisions. With reference to the number of persons by whom power is exercised, they may be divided into Monarchical, Aristocratic, Democratic, and Mixed; with reference to the amount of power, into Supreme and Subordinate; with reference to the seat of government, into Domestic and Foreign. In our review of Lord Brougham's *Political Philosophy*, we considered the first of these divisions. In the following pages we shall consider the second; taking as our text-book the original and profound work of Mr Lewis, named at the head of this article.

Mr Lewis begins by an inquiry into the nature of the powers of a sovereign government, and the modes in which they may be exercised and delegated. To these powers he assigns no limit but physical impossibility, and the will of the people—a doctrine once questioned but now generally admitted.

'The modes,' he adds, 'by which a sovereign government may 'exercise its powers, can be conveniently reduced to the four fol- 'lowing heads:—First, it may exercise its powers in the way of 'legislation. Secondly, it may exercise its powers by special 'commands or acts intended to carry into effect a pre-existing law. 'Thirdly, it may exercise its powers by special commands or 'acts not intended to carry into effect a pre-existing law. Fourth- 'ly, it may exercise its powers by inquiring into some fact or 'facts, for the purpose of guiding its conduct in some measure 'or proceeding, falling under one of the three heads just 'enumerated. These four powers may be respectively styled 'the legislative, executive, arbitrary, and inquisitorial powers 'of a sovereign government.'—(P. 6.)

It appears to us, that a more convenient arrangement will be to divide the powers of government, and the acts by which they are exercised, into two great classes,—legislative and executive; and to consider what Mr Lewis terms arbitrary and inquisitorial powers, a mere subdivision of executive power.

According to this nomenclature, the legislative power is exercised by issuing general commands binding the whole community, or, in other words, Laws. The executive power, by issuing special commands addressed to one or more individuals. Executive acts must then be subjected to two cross divisions. In the first place, they may be legal or arbitrary. A legal executive act is a special command authorized by the existing law. An arbitrary executive act is a special command not authorized by

the existing law. The issue of such a command by a subject is an offence. Its issue by the supreme power was the Greek ὑπερτιμα and the Roman *privilegium*; but it has not, as far as we are aware, any modern name.

Again, an executive act may be either judicial or administrative. A judicial act is the mere decision of a controversy. It requires in general to be preceded by some complaint, and to be carried into effect by some further administrative act. All other executive acts, including among them those which Mr Lewis terms inquisitorial, may, we think, be most conveniently comprehended under the general head of administrative.

The reader must steadily keep in mind that this is a cross division, and that a judicial or an administrative act may be legal or arbitrary. A divorce statute is an arbitrary judicial act. On the complaint of one of the parties, the supreme power, in opposition to the general law, commands the separation of a married pair. A railway statute is an arbitrary administrative act. The supreme power, in opposition to the general law, commands the individuals on a certain line of road to give up their properties to other persons. The late statute respecting 'excessive gaming,' was an arbitrary executive act, so far as respects the persons whom, in opposition to the general law, it exempted from penalties inflicted by that law; and so far as respects the persons who had already commenced actions for the recovery of those penalties, and whom it forbad to continue them. So far as respects all other members of the community, whom it deprives of the power of commencing such actions, it is a legislative act. So a statute disabling an individual to contract debts, would be an arbitrary executive act as respects that individual. It would be a law as respects the rest of the community, whom it would deprive of their legal remedies against him. Nor is an act necessarily executive because it appears immediately to affect only a given class of persons; if that be a class to which other members of the community may probably or even possibly belong. The provisions of the Mutiny Act apply immediately only to soldiers; but they affect the whole male portion of the community, since every male may have to bear arms. So the statutes respecting clerical residence affect immediately only the actual clergy; but, prospectively, all who may take orders. They are, therefore, not administrative acts, but laws.

Mr Lewis has shown with great clearness, that a supreme government must possess both legislative and executive powers, and perform both legislative and executive acts. To lay down general rules and take no steps for enforcing them, would be nugatory. And, on the other hand, to govern solely by arbi-

trary commands addressed to individuals would be intolerable,—not merely to the subjects, but to the ruler. Every government issues laws, though it is often tempted by convenience or passion to break them. The comparative rarity of arbitrary acts in mixed governments, arises from the difficulty of persuading the dissimilar bodies which together constitute the supreme government, to unite in violating an established rule. But for this purpose the governing bodies must be dissimilar, and in this consists the great superiority of complicated over simple constitutions. The former, without doubt, have their disadvantages. We have often suffered in Great Britain from the ignorant or bigoted interference of the Crown; often from the rejection, and still more often from the spoiling, in the House of Lords, of bills sent up by the Commons; and still more often from the hostility of the constituencies to measures which Parliament, if it had dared, would have passed with scarcely a dissentient. Difficulties of this kind affect us at this instant. They retard our education, impair our prosperity, and endanger our safety. Some of them would be immediately removed if our government were a pure monarchy; others if it were a pure aristocracy; and others, again, if it were essentially democratic. But the advantage would be dearly purchased. It is to the balanced powers of our complicated constitution, that we owe the general adherence of the supreme government to established rules. Under a pure form of government, or even a form in which the monarchical, the aristocratic, or the democratic element is irresistible, no man's person, or property, or station, is safe from the caprices of the sovereign; whether that sovereign be a King, a Senate, or a Convention.

All governments, however, even the most complicated, are guilty of *privilegia* in civil matters; though there are some which appear to have discontinued the practice in criminal cases. The last attempt of the kind in England was the bill of pains against Queen Caroline.

As a sovereign government is omnipotent, it necessarily can delegate any portion of its powers. But we must carefully distinguish delegation from transfer. Delegation, by a sovereign government, is always to a subordinate, and always implies, expressly or tacitly, that the delegated power may be resumed. If a sovereign government transfers, without power of resumption, any part of its legislative powers, the transferee becomes either independent, or a member of the supreme government. When the Act of 1782 transferred to the Irish Houses of Parliament the power of legislating for Ireland previously exercised by the British Houses, the Irish Houses instantly became mem-

bers of the supreme government of Ireland; and Ireland became an independent state, accidentally connected with Great Britain by possessing a common King. Such would have been the case in Lower and Upper Canada, if the Acts which gave constitutions to those provinces had exempted them from the jurisdiction of the British Parliament.

But while it retains the supreme legislative power, a sovereign government may delegate its other powers to any extent.

The Queen, Lords, and Commons, who together form the Sovereign Government of the British Empire, delegate to subordinate functionaries nearly the whole of their executive, and by far the largest portion of their legislative functions. They retain, indeed, as respects the British islands, the power of issuing arbitrary commands to individuals; and they have transferred to one of their own body, the House of Lords, a portion of judicial authority; and the burden which the retention of these two small portions of executive power throws upon them is remarkable. Appeals in the Lords, and *privilegia*, or, as they are usually termed, Private Business, in the Commons, occupy more of the time of each House than all their great duties of supreme legislation.

It is not absolutely necessary that a subordinate functionary should possess both legislative and executive authority. If the Poor-law Commissioners of England had been intrusted with no power beyond their legislative power, that is, the power of issuing general rules for the administration of the poor-laws, leaving those rules to be enforced by the ordinary tribunals, their power and their usefulness, though far inferior to what they are now, would still have been very great. Again, many administrative and judicial acts are so simple, that their performance may be subjected to rules complete and precise. Such are the registration of electors, the nomination of representatives, and the carrying into effect the orders of courts of justice. Neither the revising barrister, under a good system of registration, nor the elector, nor the constable, need have, or ought to have, any legislative power. But almost all the higher authorities, both judicial and administrative, have to deal with cases, and to meet difficulties, unprovided for by any general law. The greater part of the distributive law of every country is the creation of its courts of justice. Neither the powers of the human mind, nor the powers of language, are sufficient to foresee or to describe the complication and contingencies of events. Every court endeavours to preserve the uniformity of its decisions, partly because it is useful, and partly, perhaps, to escape trouble and responsibility. It decides every new case, therefore, according

to the analogies of its previous decisions. Every such decision becomes a precedent; that is to say, a law in cases precisely corresponding; and an element in the decision of analogous cases.

And even where the separation of legislative or executive functions is practicable, it is seldom desirable. Those who have made a law, are likely to understand best its meaning, and to be most desirous of enforcing it. How many Acts of Parliament, introduced with great pomp, and passed after long debate, have been ineffectual either because the judicial authorities have thought fit to evade them, or because some slight technical defect has rendered it impossible to apply them? The statute *de donis* was intended to perpetuate entails. The courts of law invented a fictitious proceeding which rendered it nugatory. The statute of uses was intended to prevent the strange English division of ownership into legal and equitable; the system under which the same estate belongs to one person in the opinion of every common-law judge, and to another person in the opinion of every equity judge. The courts decided that it might be rendered inoperative, by adding three words to a will or a conveyance. The statute against combinations was passed in order to prevent an ignorant, selfish, and unscrupulous minority from interfering with the employment of capital, industry, and skill; and enforcing its decrees by the destruction of property, by mayem, and by murder. The clauses which prevent prosecution, unless the offender be summoned by name, and which give an appeal on conviction, have rendered all the other enactments inoperative, and have left our manufacturing classes subject to a tyranny, compared to which the government of Turkey is enlightened, and that of Russia merciful. A traveller in Ireland is struck by the slovenliness with which the peasants cultivate the land, for the occupation of which they will incur every danger, and perpetrate every crime. He is told that, having no leases, they fear that improved cultivation would expose them to increase of rent. He asks why there are no leases, and is told that a landlord who granted a lease would soon see the land sublet; and what was enough to keep one family in constant employment and comfort, subdivided amongst half a dozen necessarily idle and necessarily miserable. But why, he asks, should a landlord permit this? What is to prevent his using the remedies afforded by the statute against subletting? Oh! the answer is—there are such technical difficulties in applying that statute, that it is little relied on.

Such failures cannot occur when the same party both frames and executes the law, and modifies its provisions to meet every

attempt at evasion. No fraudulent trustee can defy the Court of Chancery. We believe that, among the causes which have contributed to the excellence of the British Parliament, as an instrument of government, are its combination of legislative and executive functions—its being constituted of persons almost all of whom are executive officers; and its comprehending among its members all the heads of the administrative and judicial departments. A legislative assembly performing no executive duties, and excluding from its body all executory officers, soon degenerates into an opposition; and by rendering government, according to the existing scheme, impracticable, brings on a revolution, in which it generally becomes first the usurper, and afterwards the victim.

It will be seen hereafter that one of the great difficulties in the management of Dependencies, is the providing duties for the provincial assemblies.

Having explained in the preliminary essay, of which we have given an outline, the nature of the supreme and subordinate powers of government, and the mode in which the latter are delegated, Mr Lewis proceeds to a detailed examination of the political incidents to a Dependency; that is to say, to a community, part of a sovereign state, but immediately subject to a subordinate government. The portion of the sovereign state, which is the seat of the supreme government, he terms the *dominant country*; the community subject to the subordinate government, he terms the *dependency*.

'A subordinate government,' says Mr Lewis, 'is a government which acts by delegated powers, but which possesses powers applicable to every purpose of government; which is complete in all its parts, and would be capable of governing the district subject to it, if the interference of the supreme government with its proceedings were altogether withdrawn.

'A subordinate government resembles a sovereign government in this, that it is completely organized, and possesses all the institutions requisite for the performance of the several functions which are proper to a government. It differs from a sovereign government in this, that it is subordinate to, or, in other words, in the habit of obeying, the government of another political society.

'A subordinate government resembles a body of functionaries exercising certain powers of government over a district which is immediately subject to a sovereign government, (such as a county, department, municipality, or borough,) in being subordinate to a sovereign government. It differs from such a body of functionaries, in possessing the full complement of the powers and institutions necessary for governing a political community. For example, the town-council of an English borough, with the other borough officers, though they exercise many of

the functions of government in the borough, do not exercise them all; and it would be necessary for the borough, if the interference of the supreme government were withdrawn from it, to create new public departments before it would possess a completely organized government, capable of presiding over an independent political society.

'Several dependencies may be subject to the same supreme government; or, in other words, may be dependent on the same dominant community. The entire territory subject to a supreme government possessing several dependencies (that is to say, a territory formed of a dominant country together with its dependencies), is sometimes styled an *empire*; as when we speak of the British empire. Agreeably with this acceptation of the word empire, the supreme government of a nation, considered with reference to its dependencies, is called the *imperial government*, and the English Parliament is called the *imperial parliament*, as distinguished from the provincial parliament of a dependency.' *

To this definition of a dependency must be added the element of geographical separation. No district surrounded by the territory directly subject to a supreme government, is governed as a dependency. Such a mode of government is, as we shall see, less convenient to both parties than direct government. It is adopted only in consequence of the necessity of rapid communication between the subjects and their immediate rulers; and is obviously inapplicable to a district forming part of a territory possessing such a communication. Mr Lewis remarks, that as political and physical science and power increase, facilities of intercourse increase in a still greater ratio, and consequently that many countries are now governed directly, which formerly must have been treated as dependencies. And it may be added that many now continue to be treated as dependencies, after the necessity for so treating them has ceased. There was a *time* when Jersey and Guernsey were practically as distant as Nova Scotia is now. They might now be governed directly by the Imperial government, as easily as the Isle of Wight. But we seem to prefer the permanent inconveniences of the existing system, to the temporary ones of a change.

To Mr Lewis's definition of a dependency, we think that we ought to add his definition of a colony, as the two words are often used indiscriminately, though they properly express different ideas.

'A colony,' says Mr Lewis, 'properly denotes a body of persons belonging to one country and political community, who, having abandoned

* P. 71.

that country and community, form a new and separate society, independent or dependent, in some district which is wholly or nearly uninhabited, or from which they expel the ancient inhabitants.

'It is essential to the idea of a colony that the colonists should have only formed a part of the community which they have abandoned, for their newly adopted country. If an entire political community changes its country for a time, and moves elsewhere, it does not form a colony; thus a roving tribe of Scythians or Tartars does not found a colony when it settles in the temporary occupation of a new district. So the Athenians, during the Persian invasion of Attica, when they embarked in their ships and took refuge in Salamis, were not a colony. Nor would they have been a colony, even if they had permanently changed their place of abode; for when one entire nation changes its seat and establishes itself permanently in another country, (as the Franks in France, the Lombards in Italy, or the Vandals in Africa,) it is not said to found a colony.

'It is moreover essential that the persons who have abandoned their native country should form a *separate political community*. Unless persons who abandon their native country form a separate political community, they are not colonists. For example, the French Protestants, who fled from France after the revocation of the edict of Nantes, and took refuge in Germany and England, did not constitute colonies in those countries.

'Since a colony, though always a separate, may be either an independent or a dependent community, it is evident that a colony is not necessarily a dependency. It is manifest, on the other hand, that a dependency is not necessarily a colony of the dominant country; or, indeed, of any country.' *

Having distinguished a dependency from a colony, and shown it to be a community immediately subject to a subordinate government, which is itself a subject, or a portion of a supreme government, we proceed to consider, with Mr Lewis, the extent of the powers delegated to a subordinate government, and the persons by whom they may be exercised.

The simple plan is to appoint a single viceroy, resident in the dependency, and to delegate in him absolute power—legislative and executive.

The Satraps of ancient Persia, like the Nabobs of modern India, possessed, for the time, all the authority of their masters. They levied armies, imposed taxes, distributed justice, contracted alliances, and made war and peace. But it has always been found difficult to retain in subjection such independent functionaries. One remedy, which has been generally, though not universally, adopted by the supreme governments of Europe, both

* P. 170.

ancient and modern, has been to distribute the powers of the subordinate government among several persons. Thus the dependencies of Athens were generally governed by subordinate democracies; those of Sparta and afterwards of Rome, during the republic, by subordinate aristocracies; those of Venice, by subordinate oligarchies; and the subordinate governments of the British dependencies are generally mixed; each supreme government reproducing itself in miniature.

A further refinement has been not merely to distribute the subordinate power among several persons, but to retain some of those persons in the dominant country. Thus the subordinate government of the greater part of the British dependencies resides partly in persons resident in each dependency, and thence called the Local government; and partly in the Secretary for the Colonies, resident in Great Britain, and thence called the Home government. The subordinate government of British India consists partly of the Governor and Council, resident in India, and there forming the Local government; and partly in the Board of Control, and partly in the Court of Directors, both resident in England, and forming the Home government. Of course, when we consider the Colonial Office and the Board of Control as forming parts of the subordinate governments of the British colonies and of India, we speak popularly, and not technically; the Colonial Office and the Board of Control being merely the representatives of the real Home government, the Crown. Over the whole presides the Imperial Parliament, constituting the supreme government, to which all these subordinate governments, including the Crown, so far as it forms a part of them, are subordinate.

A local subordinate government must, of course, be empowered to do all those executive acts which neither the home subordinate government, nor the supreme government, is capable of performing. In all cases it must collect taxes, and must administer justice and police. And its powers must be more and more extensive in proportion as the difficulty of communicating with the supreme government increases. Thus the local government of India may make war and peace and treaties,—powers which are denied to the local governments of our American dependencies. The power to perform arbitrary executive acts is seldom expressly granted to it; though Mr Lewis has cited an example of such a delegation from the King of Spain to the Viceroy of Naples.* And even when such a power, in its fullest extent, has been included

* P. 137.

in general words, the supreme government has sometimes, on appeal, denied that such words bore their obvious meaning. It is difficult, for instance, to affirm that the Acts of the 31st Geo. III. chap. 31, and the 1st Vict. chap. 9, which gave to Lord Durham what were supposed to be dictatorial powers, did not empower him to perform arbitrary executive acts. The latter Act enabled him to make such laws or ordinances for the peace, welfare, and good government of the province of Lower Canada, as the legislature of that province could have made with the consent of the crown. And the former Act empowered the legislature of Lower Canada, with the consent of the crown, to make laws for the peace, welfare, and good government of the province, to be valid and binding to all intents and purposes whatsoever.

Under this authority, Lord Durham made an ordinance, enacting that it should be lawful to transport certain persons from the province; and then, in pursuance of that law, issued a proclamation ordering their transportation. Both the Imperial Executive, however, and the Imperial Legislature, denied the validity of the ordinance. The former released the persons affected by it, and the latter declared that it could not be justified by law;*—appending, however, to the declaration an enactment, itself an arbitrary executive act, exempting from prosecution all persons concerned in the issue of the ordinance, or in its execution.

We have seen that some legislative power is necessarily incident to the higher executive powers. Every court of law must establish rules of practice, every deliberative assembly forms of proceeding. But besides those which grow almost spontaneously from usage, almost every subordinate government has received or has assumed the power of enacting formal and permanent laws, civil, penal, and organic. Of course, the exercise of this power is under the control of the supreme government. Such a government is, as we have seen, omnipotent. Its absolute authority comprehends the whole Empire over which it presides; and necessarily enables it to legislate directly for any portion of that Empire, and to abolish, suspend, or alter, the laws enacted by any subordinate power.

It has further been said, that the laws of a dependency must not be inconsistent with the fundamental principles of those of the dominant power. Mr Lewis, with great reason, doubts the truth of this maxim. It was solemnly argued before the Court of King's Bench in General Picton's case. As governor of Trinidad, he had

* 1 and 2 Vict. c. 112.

allowed evidence to be expressed by torture. The jury found that this was required by the Spanish law, in force when the island came into our hands, and never expressly abolished. If the subordinate government of Trinidad had the power to continue this law, General Picton was justified. If, on the other hand, the obtaining evidence by torture is so repugnant to the principles of English law, as to become illegal in every country as soon as it becomes subject to British rule, his act was as illegal as if it had been committed in London. No decision was made, but all Lord Ellenborough's remarks during the argument were in favour of the accused. We tolerate polygamy in Asia, we long tolerated the burning of widows in Hindostan, we introduced slavery into many portions of America and the West Indies, and probably support it now in some parts of India. If such institutions as these are consistent with the fundamental principles of the British Government, what can be repugnant to them?

According to English law, this power of subordinate legislation, though it may be communicated, delegated, or absolutely transferred by grant, or even by mere acquiescence, originally resides exclusively in the crown. A distinction was once supposed to exist between dependencies acquired by the Crown by conquest, and those originally settled by English subjects. As to the former, the absolute legislative power of the Crown was always admitted. As to the latter, it was said that, as Englishmen carry their rights with them, they carry with them, among those rights, that of taking part in framing the law under which they are to live. This limitation, however, of the power of the crown, has been long abandoned, partly from the difficulty of saying what amount of legislative power is the birthright of Englishmen, and partly from its inconsistence with the supreme legislative power of Parliament. The dependencies with respect to which the crown retains this power being generally colonial, are usually called the Crown colonies.

We know of no case in which this power has been completely transferred by the British Crown. One of the fullest delegations is made by the 3d and 4th William IV., cap. 85,—the act which now regulates the subordinate government of British India. That act enables the Governor-General in Council to make laws for repealing or altering any laws whatsoever, now in force, or hereafter to be in force within the Anglo-Indian territories; and to make new laws for all persons, British, or natives, or foreigners, and for all places and things whatsoever throughout the whole and every part of the said territories. But such laws are not to affect any of the provisions of the Act, or of the Mutiny Act, or the prerogative of the Crown, or the constitu-

tion or rights of the India Company. If the Home government disallow any such laws, the governor, on receipt of the disallowance, is to repeal them. Unless, and until so repealed, they have the force of an Act of Parliament.

Such a power of legislation, however comprehensive in language, when given to an officer appointed by the Home government, removable at will, and bound to obey its instructions, is no material diminution of its power. It only forces it to legislate through the medium of its officer, instead of directly. He is the mere instrument of his superiors, who can always direct his measures, or stop them, or send a successor to undo them.

The local governments of Maryland, Connecticut, and Rhode Island, before the American revolution, enjoyed legislative power approaching nearer to independence, for the Crown had no veto. They were restrained, however, by the provisions of their Charters, which required that their laws should be, 'as 'far as conveniently might be, agreeable to the laws, statutes, 'customs, and rights of the realm of England;' * or 'not con-'trary to the laws of England;' † or 'as near as may be agree-'able to the laws of England, considering the nature and constitu-'tion of the place and people.' ‡ And this restraint was rendered effectual, by an appeal from their Courts of Justice to the Home government, that is to say, to the King in Council—an appeal which the subordinate legislatures could not abolish, and which was avowedly intended to prevent an improper exercise of their power.

It is remarkable that the legislators of Connecticut professed, instead of the English, to take the Mosaic law for their guide. They declared it to be their mission to declare and establish the laws of God; to proceed according to Scripture lights; and to make and repeal orders for smaller matters, not particularly determined by Scripture, according to the general rules of righteousness. In pursuance of these Scripture lights, they declared idolatry, blasphemy, witchcraft, and being a stubborn son, capital crimes; substituted the Jewish for the English rules of inheritance; and made a law of divorce of almost Asiatic liberality.

In the greater part of the English dependencies, the power of subordinate legislation is not retained, as in the Crown colonies; nor delegated to the local government, as in India; but is divided between the Home government and a local government, partly appointed by the Crown, and partly elected by the people.

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* Maryland Charter. † Connecticut Charter.
‡ Rhode Island Charter.

Mr Lewis states, that if the Crown once associates with itself in the subordinate government of a dependency, a body chosen by the inhabitants of that dependency, it cannot thenceforth legislate alone. And the case of Campbell *v.* Hall, 20 *Howell's State Trials*, 239, fully supports this position. This case is so remarkable, that we will give a short outline of it. Grenada was conquered in 1762, and ceded by the peace of Paris in 1763. As a conquest, it was a Crown colony. The Crown, however, resolved to communicate its powers to a local representative government. It issued letters-patent, dated the 9th April 1764, appointing Mr Melville Governor, and authorizing him, as soon as the situation and circumstances of the Island would admit, to call an assembly, to be elected by the freeholders; and with the advice of that Assembly, and of his Council, to make laws for the government of the island;—such laws not to be repugnant, but as near as might be, agreeable, to those of Great Britain, and to be valid unless disapproved by the Crown. It was thought, however, that the Island ought to be subjected to the 4½ per cent duty on exports, paid by the other Leeward islands, and that the difficulty of obtaining the consent of a popular assembly might be obviated, by imposing the tax before it was summoned. By a royal proclamation, therefore, dated the 20th July 1764, the duty was imposed. In December 1764 Mr Melville reached the Island, and in the end of 1765 an Assembly was summoned and elected. Payment of the tax was refused, and the Court of King's Bench, after three solemn arguments, supported the refusal. Lord Mansfield admitted, that if the dates of the instruments had been reversed, if the order in council imposing the tax had been issued before the letters-patent authorizing the governor to summon an Assembly, the tax would have been lawfully imposed; but he added, that 'by the commission to Governor Melville, the king had immediately and irrevocably granted to all who did or should inhabit, or who had or should have property in the Island of Grenada—in general, to all whom it should concern—that the subordinate legislation over the island should be exercised by the assembly with the governor and council, in like manner as in other provinces under the king.'

It appears, therefore, that the existence, or even the mere promise of a legislative assembly, fundamentally, and, as far as the Crown is concerned, irrevocably, alters the constitution of a dependency. It adds to the monarchical element, the democratic with its vast benefits, but also with its certain difficulties, and its far greater dangers. It may be supposed, therefore, that it is with great caution that such an institution is created or legalized. And such is the case at present. The Crown cannot be accused

of being too ready to communicate its powers. But no such caution was exercised, until it was frightened by the American revolution. Almost all the Dependencies acquired before that event, either were suffered to assume for themselves representative institutions, or received them by express grant from the Crown. Virginia set the example in 1619. The inhabitants, of their own authority, elected representatives, and invested them with legislative power; and the Home government was forced to ratify their act. Massachusets did the same in 1634, and with equal success, and Connecticut in 1638; and at length it became almost a maxim of English policy, that the inhabitants of a Dependency ought to have a share in their own government. Gibraltar, as a mere military post, and Minorca and our Asiatic possessions, as inhabited not by Englishmen, but by a population supposed to be unfit for self-government, were left under the control of the Home government; but, with these exceptions, we doubt whether in 1776 there was an English dependency in which a portion of the legislative power was not possessed by representatives elected by the people.

The foreign relations of a Dependency are usually managed by the supreme government. The subordinate government cannot make war, or peace, or alliances. The most remarkable exceptions to this general rule are to be found in India; where the European rulers have always allowed, and, in consequence of the difficulty of communication, probably always will allow, great freedom of action to the local authorities. The dominant country, also, in general reserves to itself the regulation of the trade of the Dependency. It is admitted that no Dependencies have been treated so liberally as those of England; but the degree in which their commerce and industry have been cramped, and misdirected, by the supreme government, will scarcely be believed by our grandchildren. Our American Dependencies were not allowed to import European commodities from any foreign country; they were not allowed to export to any foreign country their own staple commodities. Some of these they were forced to send to the only market open to them,—the mother country; in the form most cumbersome and most subject to loss and depredation. They were forbidden, for instance, to refine their sugar, or to convert their iron into steel. They were not allowed to send from province to province, by water, or by means of carriages or horses, their own domestic manufactures. Indeed, as far as possible, they were prohibited from manufacturing. 'They 'had no business,' said Lord Chatham, 'to make a horseshoe or 'a nail.' But, as to all other matters, the supreme government interfered little with their internal concerns. We have seen that

in many colonies it allowed representative institutions to arise by the mere will of the inhabitants; that in almost all the others which existed before the American revolution, such institutions were created by their Crown; and that the existence of such an institution is an irrevocable bar to the absolute legislation of the Home government. And though, of course, it cannot destroy the power of Parliament, it is a strong moral restraint on that power. 'Parliamentary legislation,' says Lord Glenelg, in his Instructions to Sir F. Head—which contain the deliberate opinion of a great statesman on the principles of colonial government—'on 'any subject of exclusively internal concern to any British colony 'possessing a representative assembly, is, as a general rule, un-'constitutional. It is a right of which the exercise is reserved 'for extreme cases, in which necessity at once creates and justifies 'the exception.' *

Having stated the modes in which the principal political power —that of legislation—is exercised in a Dependency, Mr Lewis considers the general nature of the laws which are its result. They may be divided into the systems which usually prevail in a colony, and those which usually exist in a conquered country;—most Dependencies being the one or the other. 'Colonists,' says Mr Lewis, 'take out with them the laws of the mother country 'from the necessity of the case. It is necessary for them to 'have some system of law regularly administered, and what 'other system could they adopt? They could not create off-'hand a new body of laws; and there are no persons among 'them who are acquainted with any foreign system of juris-'prudence, so as to be able to administer it. Moreover, the 'system of law under which they have hitherto lived, to which 'they have been accustomed, and which is expressed in their 'native language, is, on the whole, the best suited to their 'wants, however different the circumstances of the colony may 'be from those of the mother country.' †

The only attempt of colonists to establish at once a system of laws different from that of the mother country, was made by the New England settlers, when they proposed, as we have already stated, to make the Mosaic law their model. In this, however, they seem to have been guided by a belief, not so much of the convenience of that law, as of its sanctity. Nor did they act up to their expressed intentions. They introduced little of the civil law of Leviticus, and only a portion of the criminal law. Colonists, if left to themselves, usually adopt the criminal law of

* *Parliamentary Paper*, 1839. No. 118, p. 7.
† P. 201.

their mother country, almost completely. It is comparatively simple, and well known, and they are accustomed to it. Besides which, it does not admit of delay. If theft and violence be prevented, a small society may go on, though their civil rights and obligations are ill defined; but it must fall to pieces immediately, or be kept together by a despot, if evil-doers are left unpunished, or are punished arbitrarily.

They can adopt, however, only a portion of the civil law. Much of that law is local. The English law of Copyholds, for instance, could not be transferred. It has grown up gradually by usage in the different manors, and scarcely agrees perfectly in any two. Another remarkable English institution, the jurisdiction and practice of the Court of Chancery, cannot be usefully transferred to a young society. It is too intricate, too dilatory, and too expensive. Attempts have been often made to introduce it, and the governor has presided as Chancellor; but the result has been mischievous, or at least unsatisfactory. Poor-laws have been rejected as unnecessary, tithes as oppressive, and bankrupt laws as unfavourable to the supposed interests of the most active part of the community. All the Spanish, Portuguese, and French colonists carried with them their religious intolerance; but in most of the English colonies, the attempt to establish a privileged Church has failed.

At the very beginning, therefore, the civil laws of a colony must materially differ from those of the mother country; and the difference perpetually increases in consequence of the changes which each makes in that part of its laws which at first is common to both. France has completely altered the laws which, two centuries ago, she transferred to Lower Canada; and Holland those which she gave to Demerara. While the parent state is enacting laws which are not communicated to the colony, the colony is pursuing its own course of separate legislation. Its wants, its dangers, its pursuits, its habits of thinking and of feeling,—in short, the whole structure of its society, are different from those of an old country, and necessarily require different laws. Those laws, too, require more frequent and greater alteration—they are the clothes of a child. During the hundred years which immediately succeeded the accession of George the First, no material change was made on the laws of England. We now, indeed, look back at the oligarchy, the intolerance, the corruption, the barbarous commercial, and the sanguinary penal code of that period, with disgust. Still it was a time of great prosperity. No colony could have prospered for a century with institutions so little modified.

When a Dependency is related to its dominant country, not

as a colony but as a conquest, it retains, as we have seen, its existing laws, unless and until they are altered by the conqueror. 'Inasmuch,' says Mr Lewis, 'as many independent 'states, and many dependent colonies of other states, have be-'come English dependencies, many of the English dependen-'cies have retained wholly, or in part, foreign systems of 'jurisprudence. Thus, Trinidad retains much of the Spanish 'law; Demerara, the Cape of Good Hope, and Ceylon, retain 'much of the Dutch law; Lower Canada retains the French 'civil law, according to the *coutume de Paris*; St Lucie re-'tains the old French law, as it existed when the island last 'belonged to the French; Mauritius retains such of the French 'codes as were extended to it; Malta, which was a munici-'pality of the kingdom of Sicily, retains the old Sicilian law, as 'modified by the subsequent legislation of the grand-masters; 'the Ionian islands retain much of their old Venetian law; and 'the dominions of the East India Company retain much of the 'Hindoo, Mahometan, and other native systems of law and legal 'usages.'* A long-peopled Dependency, like India or Malta, where those connected with the dominant country by birth or by descent must always be a small minority, may continue for an indefinite period subject to its ancient laws. But a dependency which is also a colony must in time give them up. The immigrants from the dominant country are from the beginning the favourites of the local government; they are acute in discovering the faults of strange institutions, and are seldom able and never willing to find their merits. It is obvious that, when they have acquired the preponderance of influence and numbers, they will substitute for them the laws with which they are familiar; and generally they manage to do so even while they are a minority. The Dutch laws of New York, and the French laws of Louisiana, were abolished long before the Anglo-Americans were a majority. And it is probable that Lower Canada will be governed by English laws, before its population has ceased to be principally French.

We have seen that a supreme government seldom legislates for its Dependencies. The executive functions which it performs for them, are usually confined to the management of their political relations, their military defence, and the providing for them a supreme civil court of appeal. All other executory acts, both administrative and judicial, it leaves to the subordinate governments. It wants the knowledge, and sometimes the power, which are requisite to their due performance. It is, in fact, to supply this want that a subordinate government is

* P. 204.

created. If the want do not exist, if the supreme government is fit to take an active part in the administration of the Dependency, it ought to administer it directly, without interposing an intermediate authority.

The administrative functions delegated by the supreme to the subordinate government, may be performed principally by the part of that government which is on the spot—that is to say, by the local government, or principally by the Home government.

Results of great magnitude follow as the one or the other method is adopted, particularly if the Dependency be also a colony; for in a colony the duties of administration are more numerous and more important than in an old country. Among them are the management of wild lands, and the construction of public works. The first of these does not exist in an old country, and the second may generally be best intrusted to the skill, enterprise, and economy of individuals. In a new country, their due performance, neglect, or mismanagement, is the principal source of prosperity or failure to the collective society, and to almost every one of its members. Such a country, though it may have no human enemies, is in a state of perpetual warfare with the desert and the elements. The government must provide the greater part of the capital with which the contest is to be carried on,—must direct its application, and preside over the distribution of the conquered territory. Again, the pursuit and detection of crime, which in an old country may be left to the injured party, in a new one, where no one has leisure to act as accuser, always devolves on the government. Again, an old country is little affected by immigration. Whether it repel aliens, which we did formerly, or admit them freely, according to our present policy, scarcely any perceptible difference will follow. But the whole character of a colony may be altered by the immigration of a few years. In a few years, the strangers may outnumber those whom they found there; they may double the value of their lands, double their capital in amount, and still more in effectiveness, and change their villages into towns, and their towns into cities; but, at the same time, they may overmatch them in the struggle for local social eminence; elbow them out of the most lucrative positions in trade and in professions, and alter the whole tone and feeling of the society. This may be called an extreme case; though it is one that has occurred over and over again, and, indeed, is now actually taking place. But its mere possibility accounts for the high importance which the inhabitants of a colony attach to the conduct pursued by their government towards immigrants. Lastly, in a society in which there is little superiority of wealth or birth, the great source of distinction is

office. In England, not one in twenty among the educated classes would accept office, not one in a hundred ever thinks of it; and of those who attain it, not one in a thousand feels that the mere fact of his being in the employment of the government gives him a higher social rank. In Canada, all above the lowest class are anxious for office; because all who obtain it instantly rise above their former equals. Under such circumstances, the local government of a Dependency which is a colony, or, like Malta, is in many respects of the nature of a colony, is its soul. Every inhabitant sees that his own failure or success in life may depend on its measures. He has an interest, therefore, in public affairs, and a desire to influence them, far beyond what is felt even in the constitutional parts of Europe.

A few instances may be mentioned, in which what appears to be the natural course has been followed; and the performance of the administrative functions, which the supreme government has thought itself forced, by its distance from the place of action, to delegate, has been left principally to the local government. This is now the system of England with respect to India. This was formerly her system with respect to her colonies on the continent of America. That portion of the subordinate government which resided in the dominant country—or, according to Mr Lewis's nomenclature, the Home government—exercised little control over the proceedings of the local government; and indeed took little notice of them. It allowed the people in every case to elect their House of Assembly, often their Council, and sometimes their Governor. It left to them the nomination, directly or indirectly, of almost all their subordinate officers. It even allowed the separate provinces to form alliances with one another. Under this system of neglect, they flourished as scarcely any communities had ever flourished before. Under this system they bred a race of public men who have had no successors, and formed a national character, the best part of which is now lost, and the worst exaggerated.

But this example of non-interference was partial and transient. At scarcely any other time, and in scarcely any other place, has a Home government been so forbearing.

With the bright exception which we have noticed, it has almost always appointed all its officers, and allowed them to hold office during its pleasure. In the absence of representative bodies, this makes them the blind instruments of the Home government. The Governor, indeed, is restrained by his council, and the council by the governor; but the Home government which directly appoints the governor, and directly or indirectly the council, is restrained by nothing but Parliament. Again, the governor

is almost always a native of the dominant country, and so are generally his principal officers. In Spanish America, no one was admitted to any office of importance, unless a native Spaniard; even Spanish Creoles were excluded. Nearly the same may be said of British India. And even when a representative assembly exists, the extent to which a Home government, acting through this compact body of its own officers, may conduct the administration of a Dependency, without any reference to the wishes of its inhabitants, may be seen from the following extract from one of the most able State Papers of modern times, Lord Durham's Report on Lower Canada—

'The governor,' says Lord Durham, 'is, in fact, a mere subordinate officer, receiving his orders from the Secretary of State, responsible to him for his conduct, and guided by his directions. Instead of selecting a governor with an entire confidence in his ability to use his local knowledge of the real state of affairs in the colony in the manner which local observation and practical experience best prescribe to him, it has been the policy of the Colonial Department, not only at the outset to instruct a governor as to the general policy which he was to carry into effect, but to direct him from time to time, by instructions sometimes very precise, as to the course which he was to pursue in every important particular of his administration. It has been the policy of governors to endeavour to throw responsibility as much as possible on the home government, and to do as little as possible without previously consulting the colonial minister at home, and receiving his instructions. It has, therefore, been the tendency of the local government to settle every thing by reference to the colonial department in Downing Street. Almost every question on which it was possible to avoid, even with great inconvenience, an immediate decision, has been habitually a subject of reference; and this applies not merely to those questions on which the local executive and legislative bodies happened to differ, wherein the reference might be taken as a kind of appeal, but to questions of a strictly local nature, on which it was next to impossible for the colonial office to have any sufficient information. It has become the habit of the colonial office to originate these questions, to entertain applications from individuals, to refer these applications to the governor, and, on his answer, to make a decision. The governor has been enabled, by this system, to shift responsibility on the colonial office, inasmuch as in every important case he was, in reality, carrying into effect the order of the authority to which he was responsible. But the real vigour of the executive has been essentially impaired; distance and delay have weakened the force of its decisions, and the colony has in every crisis of danger, and almost every detail of local management, felt the mischief of having its executive authority exercised on the other side of the Atlantic. The most important business of government has been carried on, not in open discussions or public acts, but in a secret correspondence between the governor and secretary of state. Whenever this mystery was dispelled, it was long after the worst effects had been produced by doubt and misapprehension; and the colonies have been frequently the last to learn the things that

most concerned them, by the publication of papers on the order of the British Houses of Parliament.' *

Having examined the nature of a Dependency, its relation to the subordinate government to which it is subject, and the supreme government on which it is dependent, and the manner in which those governments respectively exercise towards it their legislative and executive powers, we proceed with Mr Lewis, though not exactly in the same order, to consider the advantages and disadvantages which this relation brings with it, to the dominant country and to the Dependency. We will begin with the Dependency.

The principal, indeed the only material advantage which a Dependency derives from its connexion with a dominant country, is protection. And this may be very great.

Few of the British Dependencies are even now capable of self-protection. If abandoned by England, almost all of them would be subjugated by the first foreign power that thought fit to attack them. Many, even if unattacked, are incapable of separate existence. If we had refused to allow our fellow subjects in New Zealand to form a British Dependency, they must have been destroyed by the savage tribes; or have sunk into a lawless community of buccaniers, miserable and demoralized themselves, and mischievous to the rest of the world. Even Dependencies which have been powerful enough to assert and to maintain their independence, have sometimes found that independence a curse. Spain misgoverned her colonies; but far less than they have misgoverned themselves. Ever since they threw off her yoke, galling as it was, they have been suffering every year more and more from war, from faction, from tyranny, from anarchy; in short, from every calamity which can arise from the utmost mismanagement both of internal administration and of foreign relations.

To protection, Mr Lewis adds, pecuniary assistance, commercial privileges, and the relief which a disinterested supreme government may sometimes give to the bulk of the inhabitants when oppressed by a powerful minority. To the pecuniary assistance, however, he attaches, as it deserves, little importance. The government expenditure of the dominant country may benefit a post like Gibraltar, but it is of little value when spread over a territory. Nor does he attach much more to the commercial privileges. Of course, as long as the dominant country is absurd enough to favour the produce of the Dependency by a system of differential duties, the Dependency enjoys an agricul-

* *Parliamentary Papers*, 1839, No. III. pp. 37-39.

tural or manufacturing privilege. But this is usually bought dearly by the restrictions imposed on its foreign trade. Still, cases may be cited,—Jersey and Guernsey are among them—in which a Dependency has been allowed both free access to the ports of a rich dominant country, and also a free trade with the rest of the world. But such cases are very rare. They suppose that the conduct of the dominant country towards the Dependency, is not merely different from that which usually accompanies such a relation, but is actually its reverse. They suppose that the interests of the dominant country are avowedly sacrificed to those of the Dependency; not those of the Dependency to those of the dominant country. The Channel Islands owe their privileges to their small size, their proximity to France, and their military importance.

The last advantage suggested by Mr Lewis is a very unusual one. The case to which he alludes, the abolition of slavery in the British Dependencies, is certainly an instance. The extinction of slavery was eminently beneficial to the bulk of the inhabitants, and the transition to freedom was effected by the supreme government, with less suffering to both parties, than must have been the case if it had been forced on by any other means within so short a period. But, on the other hand, it must not be forgotten, first, that, for many years, it was only the power of Great Britain that enabled the small minority of masters to keep down the bulk of the inhabitants. Had the British garrisons been withdrawn, slavery would have withdrawn with them. Secondly, that one of the worst incidents to slavery, the slave trade, was actually at one time imposed by England on some of her Dependencies. The local governments of more than one of them passed bills for its abolition, to which the home government refused its assent. And, thirdly, that the principal means by which the transition was effected with such comparative ease, was the payment by the British nation of a compensation, enormous in its positive amount, however inadequate it may have been to the loss sustained; and that this payment was obtained by means of an instrument which can seldom be applied beneficially, or even safely, to political purposes, religious agitation. In fact, the religious feeling in the dominant country, which certainly benefited the Dependencies by giving emancipation to the slaves, and the price of emancipation to the masters, has since shown its power of injuring them. Under the influence of one set of Missionaries, it has deprived the West Indian colonies of a supply of free labour; under that of another, it has seriously retarded, and even endangered, the

colonization of New Zealand; and, wielded by the High Church and Tory party, it inflicted on Canada the Clergy Reserves.

We now proceed to a subject far more extensive—the disadvantages of Dependencies. Mr Lewis divides them into those which naturally follow from dependence, and therefore are, or may be, universal; and those which are respectively incident to the different forms of subordinate government, and, therefore, must be particular.

He considers the first as arising from two causes,—the ignorance of the dominant country as to the position and interests of the Dependency, and its indifference to them.

'The dependency,' says Mr Lewis, 'is necessarily separated from the dominant state by the distinctness of its immediate government; and, owing to this necessary separation, the inhabitants of the dominant state are naturally more indifferent and ignorant about the concerns of the dependency than about those of any district of their own country. But the ignorance and indifference consequent upon this necessary separation are often increased by accidental causes, which estrange the dominant country from the dependency. It often happens, for example, that the two countries are divided by distance; or that the dependency is too insignificant and obscure to attract the attention of the dominant country; or that the inhabitants of the two countries are of different races, and speak different languages; and that their religion, their morals, and manners, or their laws and other political institutions, are more or less dissimilar. Not only does the dominant country know little of their concerns, but it has little desire to know any thing of them. Men's sympathies are in general too narrow to comprehend a community which is distinct from their own, although it may be ultimately subject to the same supreme government. Accordingly, the maxim that government exists for the benefit of the governed, is generally considered by the immediate subjects of a supreme government as applicable only to themselves; and it is often proclaimed openly, that dependencies are to be governed, not for their own benefit, but for the benefit of the dominant state.

'Nor are the ignorance and indifference of the dominant country about the concerns of the dependency limited to the supreme government. Hence, if any dispute should arise between the dependency and the supreme government, and if the dependency should appeal from the government to the people of the dominant state, it will probably find that it has not appealed to a better informed or more favourable tribunal. On the subject of the dispute, the people of the dominant country can scarcely be so well informed as their government; and in any struggle for power between their own country and the dependency, they are likely to share all the prejudices of their government, and to be equally misled by a love of dominion, and by delusive notions of national dignity.'—(Pp. 252–254.)

The principal disadvantages to which a Dependency, as such, is necessarily or naturally exposed, are divided by Mr Lewis into five. Its liability—1. To its laws being invalidated by technical objections; 2. To an improper introduction of the laws, language, or religion of the dominant country; 3. To having its higher offices filled by strangers; 4. To its interests being sacrificed to the factions of the dominant country; 5. To its being involved in its wars.

The first inconvenience is peculiar to subordinate legislation. The enactments of a supreme government may be good, or may be bad, but at all events they are laws. The decisions founded on them are legal; the rights which such decisions have given are safe. The law itself is safe, until the government believes it to be inconvenient. Subordinate legislation may be set aside without any reference to its convenience; and when it is set aside, all that has been done under it is void—all that has been acquired under it is insecure.

Again, a Dependency is either a colony or a conquest. In the first case, the colonists, as we have seen, carry with them so much of the law of the parent country as is applicable to their circumstances. Mr Lewis shows that this rule is so vague, that in almost every new case its application must be left to the discretion of the judge. To which he adds, that a colony loses the advantage of the progressive legislative skill of the mother country. The English criminal law was introduced into Canada in 1774. Since that time we have almost reconstructed it; removed many of the absurdities of its procedure, and almost all the cruelty of its punishments; but none of these improvements apply to Canada. On the other hand, if a Dependency be a conquest, it retains in the first instance, as we have seen, so much of its existing law as is not inconsistent with the fundamental principles of the laws of the conqueror. But these fundamental principles have never, at least as respects England, been defined. It is difficult to say what laws of foreign origin are inconsistent with them; and still more difficult to say what are not. This doubt, joined to the natural belief of the dominant country in the superiority of its own insitutions, leads it to substitute them for those of the dependency, and thus creates the second in Mr Lewis's list of disadvantages.

'In deciding,' says he, 'how far the native institutions of a ceded or conquered dependency shall be maintained, and how far the institutions of the dominant country shall be introduced in their stead, the persons conducting the government of such a dependency have strong inducements to adopt the latter course. It is far easier to administer law with which one is familiar, than law which one has to

learn. It is far easier to carry on the business of government in one's own language than in a foreign language. Moreover, it requires a considerable sacrifice of self-love, or some magnanimity, for a ruler to subject himself to the necessity of going to school, and to place himself voluntarily in a situation of inferiority, in respect of knowledge, to the persons whom he is going to govern. Whereas, if the opposite system be adopted, the ruler is placed in a situation of almost immeasurable superiority to the natives, inasmuch as he is as far superior to them in knowledge as in power. Furthermore, there is the disinterested attachment which most men acquire for the institutions of their native country, partly from being habituated to live under them, and partly from being accustomed to hear them extolled, and to be told that it is patriotic to admire and love them.'—(P. 261.)

The forcible introduction into a conquered Dependency of the language or the religion of the conqueror, must always be wrong. The introduction of any large portion of its laws is usually wrong. For a time it throws every thing into confusion. The local practitioners and courts know nothing of the new law; the lawyers and judges sent out from the dominant country know nothing of the old law; and yet each must have to do with both, since the people are to be governed as to the past by the one, and as to the future by the other. The old law, too, is usually best suited to the habits of the people, and always to their feelings; and unless a law be cheerfully, it will be imperfectly, obeyed.

Again, with its laws, the dominant country must send out those who are to administer them. These persons, if fit for their trust, must be highly paid, for they are to practise in exile what would be a lucrative profession at home. But this implies the great evil of expensive courts. As an example of the extent of such evil, we will quote Mr Macaulay's description of two of the Supreme Courts of British India:—

'Till 1836, an Englishman at Agra or Benares, who owed a small debt to a native, who had beaten a native, who had come with a body of bludgeon-men and ploughed up a native's land, if sued by the injured party for damages, was able to drag that party before the supreme court; a court which in one most important point, the character of the judges, stands as high as any court can stand, but is ruinously expensive. Judicial corruption is indeed a most frightful evil; yet it is not the worst of evils. A court may be corrupt, and yet it may do much good; indeed, there is scarcely any court so corrupt as not to do much more justice than injustice. A sullied stream is a blessing compared to a total drought; and a court may be worse than corrupt—it may be inaccessible. The expenses of litigation in England are so heavy, that people daily sit down quietly under wrongs, and submit to losses rather than go to law; and yet the English are the richest people in the world. The people of India are poor; and the expenses of litigation in the Supreme Court are

five times as great as the expenses of litigation at Westminster. An undefended cause, which might be prosecuted in the Court of Queen's Bench for £8, cannot be prosecuted at the Supreme Court under £40. Officers of the court are enabled to accumulate, in a few years, out of the substance of ruined suitors, fortunes larger than the oldest and most distinguished servants of the Company can expect to carry home after thirty or forty years of eminent services. I speak of Bengal, where the system is not in full operation. At Madras, the Supreme Court has, I believe, fulfilled its mission; it has done its work; it has beggared every rich native within its jurisdiction, and is inactive for want of somebody to ruin." *—(Pp. 92, 93.)

That all its higher offices should be filled by natives of the dominant country, is not a necessary incident to a Dependency; but its occurrence is so frequent, that it may be called a natural one. Malta may be considered a fair example of the conduct of England. It is inhabited by a people of ancient civilization, without any material intermixture of English settlers, using their own language, and laws, and for centuries, until it fell into our hands, independent. It is too small and poor to excite any fear; and therefore, on the one hand, it affords no pretext for the introduction of strangers to keep down the natives; and, on the other hand, it has no means of resisting such an introduction. From Lord Glenelg's despatch, of the 27th March 1838,† it appears that at that time 670 persons were employed in the Civil Service of Malta. Of these, 28 were Englishmen, and 642 Maltese, but that the average official income of each Englishman was L.523 : 15 : 6, and of each Maltese L.42 : 1 : 11.

The Commissioners state,—

'That the systematic exclusion of natives from superior offices has made them a degraded class in their own country. It has lowered them in the estimation of Englishmen and foreigners, and even in their own estimation; and, in short, it has produced the evil consequences which were produced in Ireland by the civil disabilities imposed upon Catholics by the law.

'The appointment of natives to superior offices, combined with the principle of departmental promotion, would not only elevate the character of the Maltese, by opening a career to native merit, but would also increase the efficiency of the government. According to the system by which the government of Malta has been hitherto conducted, inefficient Englishmen have, in many cases, been placed at the head of departments.

* *Minutes of the Supreme Government of India on Article XI. of* 1836, p. 20. *Parliamentary Papers,* 1838, No. 275.

† *Report on Affairs of Malta,* Part II. p. 27. *Parliamentary Papers,* 1838, No. 141, ii.

And this evil was almost inseparable from the system of appointing Englishmen to those departments. Even in the case of a principal office, not demanding the special knowledge which none but a native can possess, it would probably be difficult for her Majesty's government to appoint an Englishman as efficient as many Maltese, who would gladly accept the employment. Englishmen, who have ability and industry to recommend them, naturally prefer employment at home to employment in Malta; and, accordingly, the civil service of the island has been, for the most part, abandoned to persons who, for various reasons, have been unable to succeed in their respective professions, or who have otherwise failed to advance their fortunes in England.

'In proof of the truth of the opinion which we have now expressed, we may state that in many, if not most cases, the business of a principal office filled by an Englishman has been performed by one of his Maltese subordinates. In consequence of this vicious arrangement, the revenue of the island has been burdened with a high salary paid to the useless principal; whilst the business has been performed by the subordinate, and less efficiently than it would have been if he had filled the office of his principal, and had been directly responsible.'*

The danger of being sacrificed to the party contests of the dominant country, is peculiar to the Dependencies of a popular government. In absolute monarchies, and pure oligarchies, parties are mere factions, the subjects of dispute are personal and local, and the treatment of the remoter parts of the empire, generally an oppressive one, remains unaltered, whatever be the hands to which it is confided. In a popular government, the opposition, in its constant hunt after grievances, seldom neglects that fertile seat of them, the Dependencies; and the experience of the last twenty years justifies Mr Lewis in saying, that their administration is attacked and defended, and indeed generally conducted, with reference not to the welfare of the dependency itself, or of the dominant country, but to the temporary interests of the contending political parties; 'so that the people of 'the dependency become the sport of questions and interests in 'which they are not concerned, and the nature of which they do 'not understand.'—(P. 284.)

The liability to be involved in the wars of the dominant country, is the only disadvantage of dependence which Mr Lewis can be accused of exaggerating. War is, without doubt, one of the greatest evils to which human society is exposed. Its frightful, but occasional destructiveness, when it actually occurs, is scarcely more mischievous than the constant waste of capital,

* *Report on Affairs of Malta*, Part II. pp. 22-23.

intelligence, and labour, occasioned by the necessity of being always fit to encounter it. At this instant, after more than thirty years of profound peace, there is probably no European monarchy which does not employ, for military purposes, more than half its public revenue; that is to say, which does not spend in barren and constantly recurring preparation for war, more than on all the means by which the morals, the intelligence, the health, the comfort, and the general welfare of its people, are promoted. But a Dependency is not more subject to any of these evils than a Sovereign state. If it be dragged into the wars of its dominant country, it escapes those to which, if left to itself, it would have been exposed by its own vanity, its own ambition, or its own weakness. It generally escapes the enormous waste of military expenditure in time of peace. And when war does occur, the fleets and armies which protect it are mainly provided and maintained by the dominant country. War always diminishes the prosperity of a Sovereign State—it sometimes increases that of a Dependency.

We now proceed to consider the disadvantages affecting Dependencies, in consequence of the forms of their local governments, and the uses made by dominant countries of those forms—disadvantages differing of course as these forms differ, and as they are differently used by the dominant country.

The principal difference in local governments is the absence or presence of a representative legislative body. In the former case, the Dependency is exposed to the evils usually accompanying a government over which the governed have no constitutional control—evils great in a sovereign state, greater in a Dependency, greater still when that Dependency is also a colony; and probably at their maximum when it is a conquered colony, differing in language, in laws, in religion, and in habits and feelings, from its conquerors. The local governor is a stranger, in the last case a foreigner. He comes with little knowledge, and goes before he has learned much of the concerns of his temporary subjects; or has unlearned many of the prejudices which he brought with him. His principal officers are more permanent. They are generally men who intend to settle in the Dependency; or at least to remain there until they have accumulated fortunes. Sometimes they are appointed and removable by the governor, but usually they are the nominees of the Home government, and hold office at its pleasure, which is in fact for life. Sometimes the governor cannot act in important matters without their concurrence; but in general he may disregard their advice, being bound, however, to record it. But Mr Lewis remarks, with truth, that

the question whether the governor be or be not subject to the legal control of his permanent officers, is not of much practical importance. It is through them that the traditional routine by which the details of administration are managed, is kept up. The governor naturally relies on them for information and advice; they form the society in which he lives. He is dependent on their sympathy as much as on their assistance. We agree, therefore, with Mr Lewis, that 'whenever the executive government 'is uncontrolled by a body representing the community, all the 'powers of the local government will in general be vested for-'mally or virtually in the hands of an oligarchy of the worst de-'scription—an oligarchy unchecked by public opinion, and, if its 'members are not natives of the dependency, having little or no 'knowledge of the real condition and true interests of the go-'verned, and little or no sympathy with their opinions and 'feelings'—(P. 293.)

Having considered the consequences of the absence of local representative bodies, we proceed to those which follow from their presence. They depend much on the conduct of the subordinate government. That government may govern either by means of the representative body, or in spite of it, for there is no middle course. No legislative body elected by the people, confines itself to the mere business of legislation. At first, perhaps, it claims only the right to superintend the administration of the country, to complain of grievances, and petition for remedies; but it soon demands the power of controlling it. It soon demands that the principal executive officers should possess its confidence—that is to say, that they should be taken out of its own body, or rather out of the majority of that body, or at least be removable at the will of that majority. To concede this, is what we have called governing by means of the representative body. This is the government of England and of France. In France the Crown, in England the Crown and the Peers, may moderate, and, in some measure, influence the action of the will of the Deputies and of the Commons, but they do not resist it.

On the other hand, if the representative body be not allowed virtually to rule, it becomes an opposition. In a really independent country—that is to say, a country not kept down, like the constitutional states of Germany, by the fear of foreign intervention, the consequence is either the submission of the government, or a civil war, or a revolution; for the representatives, by stopping the supplies, produce an immediate crisis. If the government raise them by force, this is civil war, if it be resisted, or a revolution, if it be acquiesced in. But this weapon

is almost powerless in the hands of the representatives of a Dependency. The whole of its military, and a great part of its civil expenditure, is defrayed by the supreme government of the dominant country; and that government often retains in its hands the collection and application of a considerable revenue, which appears naturally to belong to the Dependency,—such as the produce of its import duties, the rent of its mines, and the purchase-monies and quit-rents of its wild lands. The subordinate government, therefore, suffers comparatively little inconvenience from the want of that portion of its supplies which the Assembly can refuse. Without the concurrence of the Assembly, it cannot indeed legislate, but it can, and often does administer. This is what we have called governing in spite of the representative body. From the American Revolution until the publication of Lord Durham's Report, this was the system usually adopted in the British dependencies possessing representative constitutions.

This appears to us to be the worst form which the government of a Dependency can assume. It may not be practically the worst. The integrity and prudence of the subordinate government may somewhat correct the inconveniences of the system on which it proceeds. Canada was better governed by the Colonial Office, and its nominees, than Sicily by Verres, or than Mexico and Peru by the Spanish Viceroys, and the Council of the Indies. But great mischief is unavoidable.

'There is a great tendency,' says Mr Lewis, 'to a misconception of the character and powers of a subordinate government. The relation of a subordinate to a supreme government is a complicated relation, which the people both of the dominant country and the dependency are likely to misunderstand; and the incorrect notions entertained by either party are likely to give rise to unfounded expectations and to practical errors in their political conduct. It is the duty of the dominant country to do every thing in its power to diffuse correct opinions, and to dispel errors respecting its political relations with the dependency; and, still more, to avoid creating an error on this subject, since, in case of any collision between the dominant country and the dependency, which an error on this subject is likely to produce, the weaker party, that is, the dependency, can scarcely fail to be the chief sufferer. Unless the dominant country should be prepared to concede virtual independence, it ought carefully to avoid encouraging the people of the dependency to advance pretensions which nothing short of independence can satisfy. If a dominant country grants to a dependency popular institutions, and professes to allow it to exercise self-government, without being prepared to treat it as virtually independent, the dominant country by such conduct only mocks its dependency with the semblance of political institutions without their

reality. It is no genuine concession to grant to a dependency the names, and forms, and machinery of popular institutions, unless the dominant country will permit those institutions to bear the meaning which they possess in an independent community; nor do such apparent concessions produce any benefit to the dependency, but, on the contrary, they sow the seeds of political dissensions, and perhaps of insurrections and wars, which would not otherwise arise.'—(P. 314.)

In the contest which necessarily takes place between the representative Assembly and the Local Government, each party fights its battle at the expense of the people. *Delirant reges, plectuntur Achivi.* The local government selects for its officers not those who are most fitted for the public service, but those who are most obedient to its orders—those whose insignificance shelters them from unpopularity, or whose callousness enables them to brave it. It hears with prejudice the advice of those who are best acquainted with the concerns of the Dependency, or refuses to listen to them at all. As it knows that all its intentions will be misrepresented, and all its measures thwarted, it endeavours to escape responsibility by inaction, or by referring every question to the home government. The home government, anxious also to escape responsibility, and perplexed by its ignorance of the elements on which a decision ought to be founded, is equally irresolute, and equally procrastinating. Sometimes it returns a vague answer, which the local government is to interpret as it can—sometimes it delays deciding, until the time for useful decision has past—sometimes it is swayed by the suggestions of half-informed or interested advisers—and sometimes it adopts the conduct which is best suited, not to the dependency, but to the House of Commons—the conduct which is not the most beneficial, but which can be the most easily defended, which can be justified by some precedent—or promotes the interests of some influential party, or flatters the prejudices of the English public. If the administration of the Dependency were despotic, it would probably be vigorous—if it were popular, it would be well informed; but the system which we have described combines the faults of both—the ignorance and carelessness of a Despotism, and the weakness and vacillation of a Democracy.

On the other hand, the Local Assembly, urged by the fierce passions which influence provincial party spirit, and undeterred, as Mr Lewis has well remarked, by the sense of responsibility which moderates those who hope themselves to take office, pursues a course which, in an independent state, no opposition would venture, and no public would tolerate. Sometimes it stops altogether the supplies which lie within its power—sometimes it ap-

propriates them to corrupt or party purposes—sometimes it refuses to take part in any legislation whatever—sometimes it will pass laws only for a year or six months, and then refuses to renew them; or it tacks the renewal of a necessary law to an enactment, which it knows that the other branches of the subordinate government must reject. It tries to frighten or worry the public officers into resignation, by impeachment; and selects for its attack those whose ability renders them most useful to its own enemy—the subordinate government. Its object being not to improve the existing system, but to subvert it, it strives to make that system impracticable, by rendering it odious; and to render it odious, by making it produce the least amount of good, and the greatest amount of evil, of which it is capable.

It is easy to theorize on such a state of things, and to predict the fate of the unhappy province thus made the seat of a chronic civil war; but we can support the theory by experience. Lord Durham visited two countries not dissimilar in natural advantages,—each possessing representative Assemblies, but differing in this, that for the last seventy years these Assemblies have been allowed to manage the internal affairs of the one, and have not been allowed to manage those of the other. The countries to which we allude are of course the United States, and the British North American provinces. Lord Durham states, in the following words, 'the contrast between the American and the Bri-'tish sides of the frontier, in every sign of productive indus-'try, increasing wealth, and progressive civilisation.'

'By describing,' he says, 'one side of the frontier, and reversing the picture, the other would be also described. On the American side, all is activity and bustle. The forest has been widely cleared; every year numerous settlements are formed, and thousands of farms are created out of the waste; the country is intersected by common roads; canals and railroads are finished, or in the course of formation; the ways of communication and transport are crowded with people, and enlivened by numerous carriages and large steam-boats. The observer is surprised by the number of harbours on the lakes, and the number of vessels they contain; while bridges, artificial landing-places, and commodious wharfs, are formed in all directions as soon as required. Good houses, warehouses, mills, inns, villages, towns, and even great cities, are almost seen to spring up out of the desert. Every village has its school-house and place of public worship. Every town has many of both, with its town-hall buildings, its book-stores, and probably one or two banks and newspapers; and the cities with their fine churches, their great hotels, their exchanges, court-houses, and municipal halls, of stone or marble, so new and fresh as to mark the recent existence of the forest where they now stand, would be admired in any part of the Old World. On the British

side of the line, with the exception of a few favoured spots, where some approach to American prosperity is apparent, all seems waste and desolate. There is but one railroad in all British America, and that, running between the St Lawrence and Lake Champlain, is only fifteen miles long. The ancient city of Montreal, which is naturally the capital of the Canadas, will not bear the least comparison, in any respect, with Buffalo, which is a creation of yesterday. But it is not in the difference between the larger towns on the two sides, that we shall find the best evidence of our own inferiority. That painful but most undeniable truth is most manifest in the country districts through which the line of national separation passes for one thousand miles. There, on the side of both the Canadas, and also of New Brunswick and Nova Scotia, a widely scattered population, poor, and apparently unenterprising, though hardy and industrious, separated from each other by tracts of intervening forest, without towns and markets, almost without roads, living in mean houses, drawing little more than a rude subsistence from ill-cultivated land, and seemingly incapable of improving their condition, present the most instructive contrast to their enterprising and thriving neighbours on the American side.' Major Head, the assistant commissioner of the Crown Lands' Inquiry, whom I sent to New Brunswick, states, that when travelling near the frontier line of that province and the State of Maine, now on one side and then on the other, he could always tell on which side he was by the obvious superiority of the American settlements in every respect. This view is confirmed by another fact equally indisputable. Throughout the frontier, from Amherstburgh to the ocean, the market value of land is much greater on the American than on the British side. In not a few parts of the frontier this difference amounts to as much as 1000 per cent, and in some cases to even more. The average difference, as between Upper Canada and the States of New York and Michigan, is notoriously several hundred per cent. Mr Hastings Kerr of Quebec, whose knowledge of the value of land is generally supposed to be more extensive and accurate than that of any other person, states that the price of land in Vermont and New Hampshire, close to the line, is five dollars per acre, and, in the adjoining British townships, only one dollar. On this side the line a very large extent of land is wholly unsaleable even at such low prices, while, on the other side, property is continually changing hands. The price of two or three shillings per acre, would purchase immense tracts in Lower Canada and New Brunswick. In the adjoining states it would be difficult to obtain a single lot for less than as many dollars. In and near Stanstead, a border township of Lower Canada, and one of the most improved, 48,000 acres of fine land, of which Governor Sir R. S. Milne obtained a grant to himself in 1810, was recently sold at the price of two shillings per acre.

'It might be supposed by persons unacquainted with the frontier country, that the soil on the American side is of very superior fertility. I am positively assured, that superior natural fertility belongs to the British territory. In Upper Canada, the whole of the great peninsula be-

twein Lakes Erie and Huron, comprising nearly half of the available land of the province, is generally considered the best grain country on the American continent. The soil of the border townships of Lower Canada is allowed, on all hands, to be superior to that of the border townships of New York, Vermont, and New Hampshire; while the lands of New Brunswick, equal in natural fertility to those of Maine, enjoy superior natural means of communication." *

We now come to the other alternative, that of giving to the representative body the influence over the internal concerns of the country, which it would enjoy if that country were independent. Under this system the subordinate government places its official patronage at the disposition, or at least under the control, of the majority for the time being in the local assembly, assents to its legislation, and in fact, with the exception of its trade, its political relations, and its military defence, allows the assembly to manage all the affairs of the dependency. This, as we have already stated, was the manner in which our American colonies were governed during the seventeenth, and the greater part of the eighteenth century. This is the system demanded by Canada by the name of responsible government; and for the last four years apparently conceded by England.

On this system Mr Lewis remarks that a Dependency thus governed, would, as respects its internal affairs, be independent, except on the rare occasions on which the supreme government thought fit to interfere; and that when such occasions did occur, the Dependency, unaccustomed to control, would resist. We do not see the force of this objection, if it be meant as one. We shall see hereafter, that the only real advantages which a dominant country derives from its dependencies are, first, the security of a commerce uninterrupted by war or by hostile tariffs; and, secondly, an outlet for its emigrant population. But these advantages it retains under the proposed system of general non-interference. Foreign commerce, and the reception of emigrants from the dominant country, are matters which dependencies always leave to the supreme government, and they are the only matters in which that government ought to interfere. Every thing else should be left to those who are on the spot. The people of England may think that the people of Canada mismanage their wild lands; that they waste the provincial revenue on public works extravagantly expensive, or ill planned, or, as without doubt is often the case, mere jobs; that they ought to have a privileged Church, and that it ought to

* Lord Durham's *Report*, pp. 95, 96.

be endowed with one-seventh of the land. In these opinions the people of England may be right or may be wrong; but what business is it of theirs? There is nothing so disagreeable in private life, or so dangerous in politics, as the restless spirit of meddling, which wishes to set every body right. Of course, if the supreme government, or the home government, thinks itself responsible for the due management of the internal affairs of the Dependency, it must constantly interfere in them; but in that case, as we have already remarked, the Dependency ought to be governed directly. It ought to be politically incorporated, send its representatives to Parliament, and throw aside the troublesome machinery of a subordinate government. If this is impracticable, it ought to be left to itself. The circumstances which are objections to direct government, must be equally objections to interference. The middle course—the half measure of giving to the Dependency a local government, but exercising over that government a jealous superintendence—may flatter the vanity of the dominant country—may gratify it by giving to it the appearance of a vast outskirt of Empire—may afford badges for its factions when they want matter of dispute—may enable it to people its colonies with the refuse of its jails, and to govern them by the refuse of its aristocracy. But there its utility ends.

To say that this system of interference ought to be maintained, in order to promote the welfare of the Dependency, is mockery. It is the argument of every despot. 'My people are not fit to 'be their own masters. I am responsible for their happiness, 'and I intend to make them happy, not in their own way, which 'is absurd, but in mine.' It is far less plausible than the asseveration of Mr Calhoun, that the negroes of the Carolinas are kept in slavery for their own good. To say that it ought to be maintained, in order to preserve the connexion between the Dependency and the dominant country, is, if possible, still more erroneous. It is a system which places that connexion in constant and immediate danger of severance. It is a system under which the inhabitants of the Dependency believe that that connexion impoverishes, injures, and degrades them—diminishes the value of their land, capital, and labour—robs them of their rights as citizens, and renders their resentment contemptible, because it is impotent. It is a system in which the dominant country at last considers the Dependency a mere nuisance, a manufactory of complaints, wasting whole days of the public time, of which every minute is valuable;—led by demagogues more ignorant, unreasonable, and dishonest, than the worst examples in Europe; in short, as an incumbrance which must be endured, only be-

cause it cannot be cast off without wounding the vanity, or, to use the common expression, the honour of the nation. No connexion can be safe when such are the feelings on each side.

Having considered the advantages and disadvantages which affect a Dependency, in consequence of its relation to a dominant country, we proceed to those which affect a dominant country, in consequence of its relation to a Dependency. We will begin with the disadvantages. In the first place, the dominant country must protect the Dependency from foreign aggression and from internal disturbance. Even in peace this may be a serious burthen. A few Islands in the tropics now occupy more of our troops than are sufficient for the whole of Great Britain. The petty dependency of Algiers costs France an army of more than 100,000 men, and an annual expenditure of more than three millions sterling. In time of war this expenditure may be indefinitely increased. The Dependencies of an Empire are always its most vulnerable points, and the preparation for defence must answer to the danger of attack. Again, Dependencies add to the probability of war, even more than they do to its expenses. The greater part of the wars of the last century were colonial. A dispute about a Dependency was the occasion of our war with France in 1803; and disputes about Dependencies have been the principal causes which have threatened war during the last thirty years. Again, partly in order to reconcile the Dependency to the restrictions imposed on its commerce, and partly in consequence of the influence which persons connected with it, as proprietors, mortgagees, or traders, possess in the imperial councils, the dominant country generally gives to the productions of the Dependency a complete or a qualified monopoly in her own markets. In Sugar alone, the monopoly thus given by England costs us a million a-year in public revenue, and twice that amount in private expenditure. If the account between England and her Dependencies could be stated, and the public and private loss compared with the public and private gain, we believe that the excess of loss would equal the whole remaining cost of protecting and governing the British islands.

Nor must the waste of public time and attention on the internal affairs of the Dependency be forgotten. This, indeed, may be avoided, if the dominant country will give up its habits of jealous interference, and allow the Dependency to manage its own concerns in its own way; but, while those habits last, the inconvenience is considerable. A party contest about the affairs of a colony turned out a Ministry in 1839; and though it returned to power, it never recovered

the shock which the Jamaica debate occasioned. Next year, month after month was employed in discussing how the Imperial Parliament ought to deal with the Clergy Reserves of Canada. Night after night we listened to debates as to the meaning of the words, 'a Protestant Clergy.' One Bishop or Tory peer after another plunged into the dark metaphysics of property; to show that even the under-graduates of Christchurch and Trinity had a vested interest in the colonial provision made by our ancestors for the Anglican Church. Others excluded from a share of the provision all Presbyterians; since, according to the true doctrine of Apostolic Succession, no Presbyterian Minister is a Clergyman. Others urged the duty of the supreme government to propagate the religion which they assumed to be exclusively true; to tolerate indeed all other sects, but to endow only the Church of England. We are not dwelling now on the dangers of the discussion, on the probability that a factious vote, meant merely to tease Lord Melbourne, might have lighted up war in Canada, in the United States, and ultimately in Europe; but merely on the waste which it occasioned of public time and attention. The supreme government of the British Empire has not time or attention for half the matters which it necessarily must dispose of. To throw on it duties which could be performed by others, is to aggravate one of its greatest defects.

When we consider the magnitude of the evils imposed on the dominant country by the possession of a Dependency, it may be supposed that the advantages, purchased at such trouble, such expenditure, and such risk, must be enormous. That they must be very attractive, that they must be of a kind strongly affecting the imagination, is obvious. We are induced to place at the head of them that which Mr Lewis places last, 'the glory which 'a country is supposed to derive from an extensive colonial em-'pire.' We concede, indeed, to Mr Lewis, 'that a nation de-'rives no true glory from a possession which produces no assign-'able advantage to itself, or to other communities.' We concede to him, 'that if a nation possess a dependency, from which 'it derives no public revenue, no military or naval strength, 'and no commercial advantages, or facilities for emigration, 'which it would not equally enjoy if the dependency were inde-'pendent, and if the dependency suffers the evils which are the 'almost inevitable consequences of its political condition, such 'a possession cannot justly be called glorious.' * We concede all this, and we admit that this is nearly a fair picture of the

* P. 239.

usual relations of dependencies and dominant countries. Still we believe that the desire of this glory is the most frequent motive, if not for the acquisition, at least for the retention of dependencies.

'To propose,' said Adam Smith seventy years ago, 'that Great Britain should voluntarily give up all authority over her colonies, and leave them to elect their own magistrates, to enact their own laws, and to make peace and war, as they might think proper, would be to propose such a measure as never was, and never will be, adopted by any nation in the world. No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might be to govern it, and how small soever the revenue which it afforded might be in proportion to the expense which it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation. The most visionary enthusiasts would be scarcely capable of proposing such a measure, with any serious hopes, at least, of its ever being adopted.' *

Some real advantages, however, a dominant country does derive from a Dependency; though most of them are subject to Mr Lewis's remark, that 'they depend on the present system 'of international relations, and the exclusive and anti-social 'policy to which independent states have been led by a mis-'taken view of their own interests.' †

Some Dependencies are military posts. Such are Gibraltar, Malta, the Ionian Islands, and Aden. We occupy them partly for our own convenience, and partly to exclude our rivals. 2. Some dominant countries have drawn a public revenue from their Dependencies. Spain is supposed to obtain now about a million a-year from Cuba. 3. A dominant country which prohibits a dependency from selling in any market but her own, may sometimes obtain its productions under their real market value. There was a period at the beginning of this century during which England extorted this advantage from her West Indian colonies. But it excited so much discontent, that she was soon forced to surrender it, and to allow them a direct trade with other countries. 4. Where a dominant country possesses rich Dependencies, and great productive powers, she may secure a steady market to her industry by preventing her Dependencies from subjecting her products to prohibitions, or to excessive or differential duties. And it is peculiar to this advantage that it is not obtained at the expense of the dependency. The Depen-

* *Wealth of Nations*, B. 4, ch. 7, Part III.
† P. 235.

dency is prevented merely from sacrificing both the immediate and the permanent interests of the whole body of its consumers to the immediate interests of a few of its capitalists and artisans. If the American states had remained British dependencies, they would not have been allowed to fetter and misdirect by protective tariffs their own capital and industry, as well as ours. It is true that most dominant countries have abused this power. They have endeavoured to obtain in the market of the dependency not their natural share, the share which their superiority as manufacturers or as carriers would have given them, but a monopoly. And they have thereby injured both parties; the Dependency by diminishing its powers both of productive and unproductive consumption; the dominant country by checking the growth and wealth of her own customer, the Dependency, and by directing a portion of her own productive forces to objects on which they are employed at a disadvantage. But the liability of a power to abuse by human ignorance, cupidity, and injustice, though it diminishes its advantages, cannot be said to destroy them. 5. A densely peopled dominant country may sometimes find in a thinly peopled Dependency a vent for her own surplus population. Such a vent is becoming almost necessary to England. A commercial code, which, by its prohibitions, its preferences, its sliding scales, and its mixture of morality and faction with finance, seems to have been almost a contrivance for rendering the industry of our towns irregular and insecure; and a system of poor-laws, which has created in many country districts a labouring population for whom there is no profitable employment, and then has chained them to their place of settlement, have produced local congestions of people, which threaten first to ruin the parishes on which they feed; and ultimately to disturb the tranquillity, on which the prosperity of England, more perhaps than that of any other country in the world, depends. For this disease the most immediate palliative is emigration. Our influence over our dependencies enables us to prevent their creating obstacles, and to obtain from them some direct assistance. And it seems, at first sight, probable that those whose emigration is desirable, will be more easily persuaded to it if it do not involve a new allegiance, and the education of their children as aliens.

It appears, however, from experience, that dependencies are not necessary to emigration, and it seems doubtful whether they materially promote it. No country possesses dependencies so extensive, and so thinly peopled, as those of England. No country so systematically encourages emigration to those dependencies. Yet, of the 93,501 persons who

left the British islands in 1845, 58,538 emigrated to the United States, and only 34,963, therefore, to our dependencies, even supposing them to have absorbed all the remainder. For the twenty years ending with 1844, the aggregate emigration has been at the rate of 62,779 a-year, or 1,255,975 in the whole, of whom 569,633, nearly one half, have gone to the United States.* And yet the British government not merely abstains from promoting emigration to the United States, but endeavours, by every means in its power, by appointing agents, by circulating information, and even by pecuniary assistance, to direct it towards our own dependencies. There seems no reason for supposing that, if our American and Australian colonies were independent, they would offer less facilities to emigration than they do now.

We are inclined, indeed, to believe, that the class which most profits by the outlet afforded by the British dependencies, consists not of the poor, but of the rich. Not one poor family in five hundred emigrates, not one in two hundred and fifty ever thinks of doing so. How few are the families among the higher classes who do not look to Asia or America as affording a certain or a probable provision for some of their members! Among the social advantages enjoyed by the British aristocracy, there is none which so much excites the envy of foreigners. They complain that, with them, there is little career for educated young men. That the army, vast as it is in most continental states, is overstocked; that the government departments at home, though every expedient is used to create duties, in order to provide for functionaries, are beset by candidates; that trade requires capital, and law and medicine extraordinary talents; and that the result is, that half the young men of fair abilities, small means, and good education, who are turned out every year from their schools and universities into the world, find that the world does not want their services. England, they say, provides for such persons in her colonies, or in India. There is some exaggeration in this statement, but the facts are substantially true. We owe mainly to them our immunity from the indigent well-instructed idlers who fill the streets of Paris and Berlin, dissatisfied with their position, dissatisfied with the existing order of things, and anxious to try the chances of revolution or war. And we trust that the opportunities now offered to young men possessed of knowledge, energy, and some capital, to employ them all in agriculture or commerce in the countries which are now our dependencies, will long continue. For this

* *Colonization Circular*, No. 5, Feb. 1845.

purpose, however, they need not remain Dependencies. The educated emigrant, indeed, is not so ready to live under a foreign government as the labourer or the artisan; but he can do so. Natives of Great Britain, particularly of the northern portion, swarm in all the commercial marts of the civilized world. But the provision which our Dependencies, as Dependencies, offer, is already diminishing, and must in time almost disappear. That provision consists in the monopoly of the patronage of the subordinate government. Such a monopoly is obviously mischievous to a Dependency possessing native candidates qualified for office. If our Dependencies are ill governed, we shall lose them. If they are well governed, the natives will rise in wealth, knowledge, and importance. They will demand their share in the administration of the country; and in time that share will amount to nearly the whole. This is already the case in Canada; it will soon be the case in all our other American possessions; and ultimately it must take place even in India.

There remains one incident to the relation between a dominant country and a Dependency, which we have reserved until we had considered all its other qualities—its tendency to a sudden and calamitous termination. All other political relations are capable of indefinite duration or of gradual change. That of a Dependency to a dominant country bears the seeds of a violent dissolution.

We have seen that this relation exposes a Dependency to many grievous evils, and offers to it only one important benefit—protection; and we have seen that, having a complete, though subordinate legislative and administrative organization, it possesses, at least in appearance, the means of self-government. As soon, therefore, as a Dependency thinks itself capable of self-protection, it instinctively attempts to obtain independence. Frequently such an attempt is made by a Dependency which is totally unfit for self-defence or for self-rule; as was the case with Ireland in the last century, and with the Spanish colonies and Lower Canada in the present; and we may be sure that it will never be long delayed after the grounds for making it are sufficient. If the dominant country, to which a dependency, even when loyal, is generally burdensome, and when dissatisfied is both burdensome and dangerous, would cheerfully, or even reluctantly, consent, the consequences, both immediate and ultimate, would generally be beneficial to both parties—always, indeed, in the case of a distant Dependency to the dominant country, and almost always to the Dependency. But vanity in the mass of the people, and the interest of those

who profit by the monopolies, the patronage, and the other abuses of the connexion, have always prevented such an acquiescence. And the result generally is war, the intervention of foreign powers, and ultimately separation, after a contest, which sometimes, as in the case of the Spanish colonies, ruins the Dependency, and sometimes, as in the case of the British colonies, subjects the dominant country to burdens which she never can shake off.

In the rare cases in which the Dependency is so near to the dominant country, as to be capable of direct government, the remedy is incorporation. If this cannot be applied, we almost fear that there is none.

If a Dependency be denied a popular representation, it has no organ to express its wants or its complaints. It has no means of access to the only check on its mal-administration,—the public opinion of the dominant country. While all is externally calm, abuses, vexations, and insults, the results not of ill-will, but of what is more offensive, of contempt and neglect, render the whole population of the Dependency quietly and silently hostile; until some accident, a provocation of a new kind, or the presence of a foreign force, or some calamity or danger affecting the dominant country, occasions a sudden and general insurrection. If it receive a popular assembly, and that assembly be not allowed substantially to direct the local government—if the principal offices and power, emolument and trust, are not filled by persons selected from its majority—if opposition to the executive, or to the other legislative authorities, be the great business of the body which represents the people, it will probably create obstacles which render good government impossible, and constitutional government so difficult, that the dominant country either annuls the representative body, and thus incurs the dangers which we have described as resulting from its absence, or concedes for all internal purposes virtual independence.

If the dominant country make this concession—that is to say, if it allow to the local popular assembly the influence which naturally belongs to it—it creates a relation more permanent, without doubt, than either of the former, but still fated to the same end. It is a relation requiring from each party a degree of good sense and forbearance, which experience does not allow us to expect. The dominant country will see much in the administration of the Dependency which it thinks absurd or mischievous; for it will probably think mischievous or absurd every institution and mode of conduct which differs from its own. It will probably fancy that it is its duty to interfere; and, if it do interfere, it will be resisted.

On the other hand, the Dependency will find fault with the portion of its administration which the dominant country retains. It will not bear that its legislation should be subject to be disallowed, its commerce to be restricted, and its foreign relations to be altogether decided by the imperial government. Having its own government, its own institutions, its own traditions, and its own history, with the strength of a nation it will acquire the feelings of one. It will admit, perhaps, that it owes allegiance to the sovereign of the country which calls itself dominant; it will admit that the inhabitants of that country are the fellow-subjects of its own citizens; but it will deny that it owes any allegiance to the supreme government of that country. It will affirm that its own parliament is co-ordinate with the parliament which calls itself imperial. It will affirm, in short, that it is an independent state, connected, indeed, with another state by the accident of a common allegiance,—as Hanover was connected with Great Britain, or Scotland, before the Union, with England,—but in no respect subordinate to that state. And sooner or later, according to the rapidity of its growth, it will establish its pretensions. No one can believe that, even if we had abstained from taxing our American colonies, the United States would now have been subject to a subordinate government.

In general, it may be said that one of the chief causes which weakens the power and diminishes the prosperity of a great and enterprising maritime nation, is its liability to be cramped, and weighed down and exhausted, by a parasitical growth of Dependencies. It seems to be the fate of every such nation to waste her resources, first in creating them, afterwards in protecting them, and at last in vain efforts to retain them.

NOTE,

Respecting certain Misrepresentations contained in the Westminster Review *for March last.*

THE Editor of this Journal feels it to be his duty to notice certain misrepresentations contained in the *Westminster Review* for March last, regarding Mr Stephen, Under Secretary of State for the Colonies. That gentleman is there represented (No. LXXXVIII. pp. 190–1–2) as the author of various Articles, or parts of Articles, relative to the Colonization and Affairs of New Zealand, published in this Journal in the years 1840–1–2, and 4. No one who looks at these allegations can for a moment misapprehend their character and intentions; but it is no part of the duty or business of the writer of this Note to comment upon them; and he, therefore, simply limits himself to a broad and explicit denial of the pretended facts which they set forth. Mr Stephen never either wrote, or advised, or saw, till he saw them in their respective Numbers as published—if indeed he saw them even then—any one of the Articles or passages referred to in the *Westminster Review* as written by him; and the Editor of this Journal may add, though nowise called upon to do so, that Mr Stephen never wrote for it any Article upon any Colonial subject whatever.

The Editor of the *Westminster Review* will of course judge, according to his own notions of the courtesies proper to such occasions, whether he will insert the above denials in his next Number or not.

M. N.

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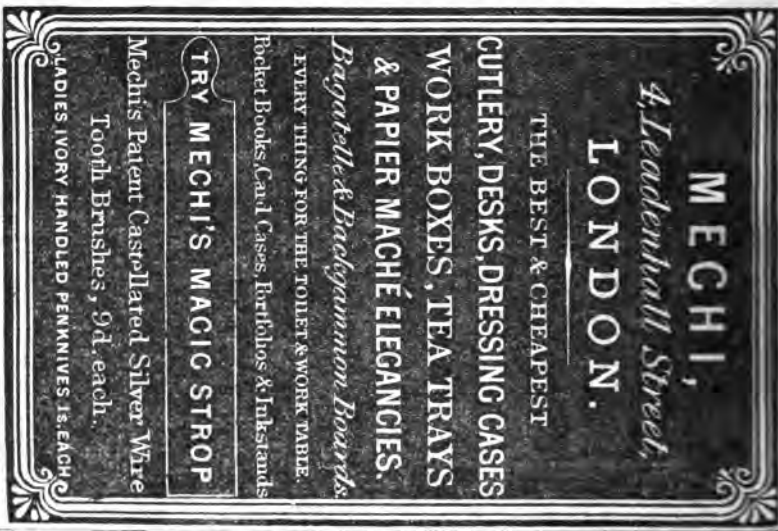

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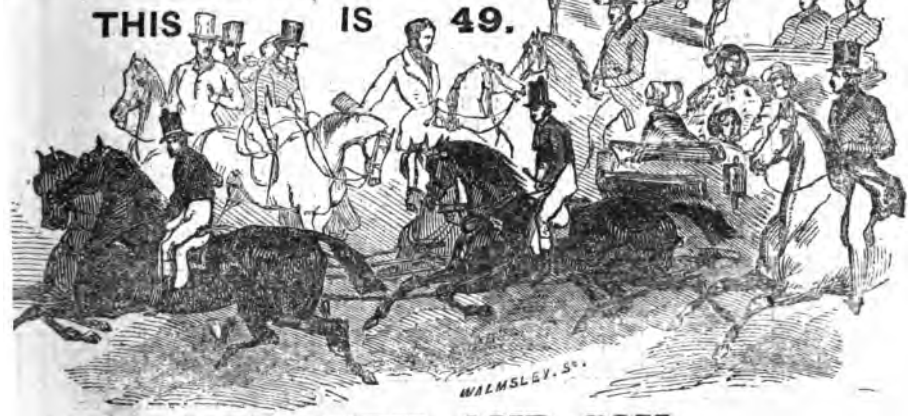

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40	1 6 10	1 11 10	2 17 11	40	3 3 2
50	1 15 1	2 4 5	4 1 7	50	4 9 0
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30	1000	104 3 0	89 8 0	1193 11 0
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30	1 1 8	1 2 8	1 2 7	2 0 7
35	1 3 3	1 3 10	1 4 2	2 6 8
40	1 5 0	1 6 1	1 6 9	2 14 10

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Annual Premium to Assure £1000.			Advantages by Assuring in the Argus Office.		
Age.	Argus Office.	Offices dividing Profits.	Annual Saving.	Equivalent to a Bonus of	Or a Policy for
21	£16 5 10	£22 5 0	5 19 2	£367	£1367
26	18 6 8	24 10 0	6 3 4	337	1337
31	20 16 8	27 5 0	6 8 4	309	1309
36	24 1 8	30 13 4	6 11 8	375	1275
41	28 8 4	34 18 4	6 10 0	229	1229

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Age.	First Seven Years.	Second Seven Years.	Remainder of Life.
20	£1 0 8	£1 7 7	£2 1 4
30	1 7 1	1 16 1	2 14 1
40	1 17 9	2 10 4	3 15 6
50	2 18 5	4 7 8	6 6 8

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